# Public Utilities

## FORTNIGHTLY



March 28, 1940



PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

# "I'VE GOT A COMPLAINT TO MAKE, MR. WATTS!"

"WHY, Miss Baker... I thought everything was running smooth as glass in the Home Service Department!"

"It's not *my* department I'm kicking about... it's... well, it's that sign in the Main Street window..."

"That Silex sign?"

"Yeah... it says 'Silex with *Stove,* $4.95' ... and that's all. Why that stove *alone* is worth a window by itself!"

"Wha-at? A stove's a stove, isn't it?"

"Not *that* stove... You see, Mr. Watts, in making coffee, one of the most important things is that the coffee and the water be kept together exactly the right number of seconds to infuse properly — long enough to get all the flavor, but short enough to miss the bitter taste. This Silex stove is scientifically designed to do just that. A woman shuts off the current when the water reaches the upper bowl, and the Silex does the rest all by itself. There's no watching the clock... or juggling the Silex off the stove. It's self-timing. In fact fool-proof! You *can't miss* having perfect coffee every time with an electric Silex."

"What — 'Self-Timing?' — self-operating? Why, Miss Baker, that's sensational. We'll tell every woman about that stove ... and how! Get me that display man, and the advertising manager, pronto! It all spells more KWH to me!"

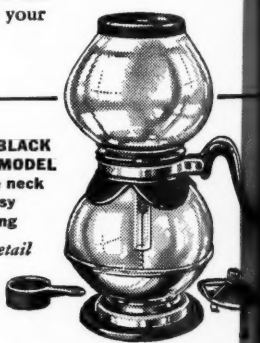
**Self-Timing is the Story!**

And *only* Silex Glass Coffee Makers have this self-timing stove. That's the special feature that makes women use their Silex *every* day... and an average of 87 KWH a year per meter. Plan your Silex promotion now. Call in your Silex representative. He has plenty of ideas and material that will help you add a lot more KWH to your load!

## *Every Electric Silex has a "Self-Timing" Stove!*

▶ It's an exclusive Silex feature, patented so others can't copy. Women love it... makes uniform, better-tasting coffee every time. All electric Silex Glass Coffee Makers have "Self-Timing" Stoves. And electric models are priced from $4.95 to $29.95. Illustrated, 8-cup, black trim...

PYREX BRAND GLASS USED EXCLUSIVELY



**BRETTON BLACK ELECTRIC MODEL** with wide neck for easy cleaning

**$4.95** *retail*

Genuine SILEX GLASS COFFEE MAKER

TRADE MARK REGISTERED U.S. PAT. OFF.

THE SILEX COMPANY . . . HARTFORD, CONNECTICUT

*Creators of the Glass Coffee Maker Industry*

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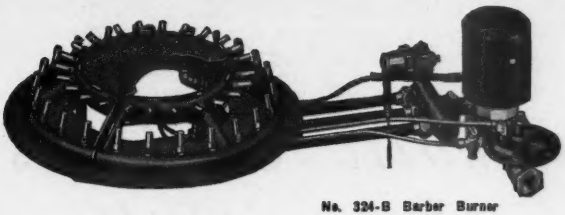
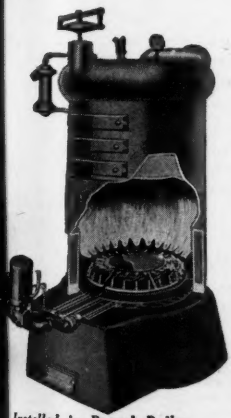


No. 324-B Barber Burner

# BARBER Conversion BURNERS

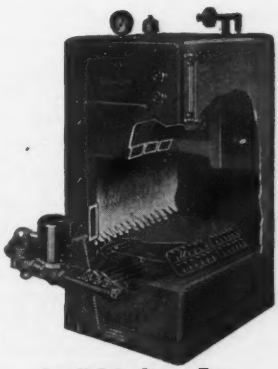
## —Adaptable to Any Shape Furnace or Boiler

★ *Better Combustion*—because *only* patented Barber Jets give correctly balanced air-and-gas pre-mixture for complete combustion, and 1900° flame temperature on atmospheric pressure. ★ *Higher Efficiency*—because all Barber Units, for either round or oblong grates, are properly adjustable to fit the job, and to lay a perfectly controlled barrage of "scrubbing" flame action *directly* on walls of fire box.



*Installed in Round Boiler*

★ Experience has convinced thousands of heating dealers and gas companies that Barber Burners mean *easier* sales and more *lasting* satisfaction. Listed in A.G.A. Directory of Approved Appliances. Write for Catalog 38A on Conversion Burners, Appliance Burners, and Regulators.



*Installed in Square Type Boiler*

**E BARBER GAS BURNER CO., 3704 Superior Avenue, Cleveland, Ohio**

**• BARBER *Automatic* JET GAS BURNERS •**

***For Warm Air Furnaces, Steam and Hot Water Boilers and Other Appliances***

*Editor*—HENRY C. SPURR
*Associate Editors*—ELLSWORTH NICHOLS, FRANCIS X. WELCH, NEIL H. DUFFY
*Financial Editor*—OWEN ELY

# *Public Utilities Fortnightly*

VOLUME XXV *March 28, 1940* NUMBER 7

*Contents of previous issues of* PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*



*Advertising Section*



¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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# Pages with the Editors

"THESE are the days when Washington political commentators must seem to the outside world something like a cult of ancient Egyptian priests scanning the skies for strange birds, turning over every rock to study the tracks of worms and reptiles, and peering into the faces of passing animals—all for some sign of an omen for the future. Whether it be a good, bad, or indifferent omen makes little difference as long as it does make news."

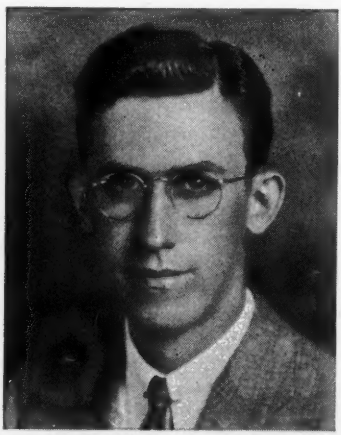
WE picked up this picturesque passage from the Washington department of a recent issue of TELEPHONY, the journal of the independent telephone industry. It expresses the atmosphere in the nation's capital at the present time with a pungent air of truth. Already the clatter of the linotype machines, like the distant roll of kettledrums, is beating out the introductory measures to that swelling quadrennial symphony which will have us all dancing and tearing our hair before the calendar year is over.

IT is a Presidential Year. It won't be long, now, before Dr. George Gallup and his expert colleagues in the art of nose counting, prophecy, and poll taking will fall upon us in full force. Every day will bring us another analysis of trends of sentiment and curves of popularity. By the summer months we should be snowed under by an unseasonable blizzard of statistics and special surveys.

ALBERT W. ATWOOD

*Investment capital is not on strike. It is merely unemployed—the victim of a regulatory lockout.*

(SEE PAGE 387)



W. CLARENCE ADAMS

*Building lines is only half the battle for rural electrification; they must be loaded with customers.*

(SEE PAGE 403)

BUT, for all its hullabaloo and wasted motion, we, as American people, seem to enjoy it. It is a sort of festival of democracy which comes every four years. It is a luxury which the United States alone, in the world today, seems able to afford. The true voice of the people may be difficult to find or to understand after we have found it. But, once we abandon the search, our democracy itself is on shaky ground.

INCIDENTALLY, we noted in this respect a passage from a recent speech by Dr. George Gallup before the American Political Association at Washington. Dr. Gallup, in discussing the various ramifications of public opinion and democracy, found himself suddenly confronted with the problem of the Expert. The doctor refused to subscribe to the view, held in many high quarters these days, that the people should be led by an aristocracy

of specialists. Dr. Gallup commented as follows:

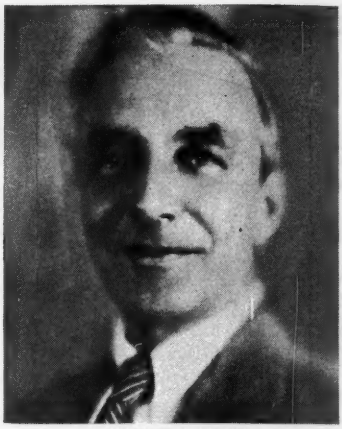
> All that experts can do, even assuming that we can get them to agree about what need be done, is to tell *how* we can act. The objectives, the ends, the basic values of policy must still be decided. The economist can suggest what action is to be taken if a certain goal is to be reached. He cannot as an economist say what final goal should be reached. The lawyer can administer and interpret the country's laws. He cannot say what those laws should be. The social worker can suggest ways of aiding the aged, he cannot say that aiding the aged is desirable. The expert's function is invaluable, but its value lies in judging the *means—not the ends* —of public policy.

IT takes considerable courage these days to declare the simple view that the principal business of a school teacher should be to teach children and growing youth—not to erect a new world. Our academic halls are filled with emphatic gentlemen, who appear convinced that the voice of the people should be subjected to expert tutelage and that the hand that chalks the blackboard should rule the world.

NEEDLESS to say, both the political order as a whole and utility regulation in particular have felt the impact of such pedagogic ambitions. It has brought us to the point where experienced business and financial operators are looked upon, in some quarters, as disqualified by their very background from assuming administrative control, under regulatory or judicial auspices, of important industrial units involving millions of dollars invested.

YET there have been indications that regulatory measures conceived by economic theorists (and administered in pretty much the same spirit) are bringing unforeseen consequences. Thus, it is charged that the Securities Act of 1933, designed to protect the investor from exploitation by shrewd financial manipulators, has had the effect of protecting him from opportunities to invest at all. Have sound and desirable security issues of important corporations been driven "underground," so to speak, by the government's restrictions on interstate traffic in such securities?

THIS is the question analyzed by ALBERT W. ATWOOD, whose long experience as a financial writer well qualifies him to deal with this subject in the leading article in this issue. MR. ATWOOD is, perhaps, best known for his work as chief editorial writer of *The Saturday Evening Post* from 1927 to 1937. Prior to that, and following his graduation from Amherst College ('03), he became financial editor successively on the *New York Press, McClure's Magazine, Harper's Weekly,* and *Review of Reviews.* He is presently engaged in literary and civic activities in the District of Columbia, where he is president of the local Phi Beta Kappa Association.



JAMES H. COLLINS

*From a public relations standpoint, a public utility company should be more than a mere name on a monthly bill.*

(SEE PAGE 395)

ANOTHER well-known financial and business writer, whose articles used to be often seen in *The Saturday Evening Post* of years gone by, is JAMES H. COLLINS. His article on the possibilities of utility oratory as a matter of public relations is found in this issue (beginning page 395). For the past nine years MR. COLLINS has been editor of *Southern California Business,* local magazine of the Los Angeles Chamber of Commerce. He has been a frequent contributor to numerous business and financial publications.

IN the "What Others Think" department of this issue we present a sympathetic analysis of the recent annual report of the Rural Electrification Administration. It would appear from this that the REA is making great progress in putting power down on the farm; but private utilities are also making progress along this line. W. CLARENCE ADAMS, experienced journalist, who is now engaged in freelance writing in Arkansas, gives us an interesting description of how one privately owned electric utility in the Southwest is handling this important job (beginning page 403).

THE next number of this magazine will be out April 11th.

*The Editors*

# *In This Issue*

## *In Feature Articles*



## *In Financial News*



## *In What Others Think*



## *In The March of Events*



## *In The Latest Utility Rulings*




PREPRINTS FROM PUBLIC UTILITIES REPORTS

*Various regulatory rulings by courts and commissions reported in full text, pages 65–128, from 32 PUR(NS)*

# Remarkable Remarks

*"There never was in the world two opinions alike."*
—MONTAIGNE

HERBERT COREY
*Washington author.*

"The only Federal bureau that ever died was the Federal Spruce Administration . . ."

W. GIBSON CAREY, JR.
*President, United States Chamber of Commerce.*

"We've socialized and experimented ourselves into a stalemate with laws, innuendo, and bad will."

DAVID LAWRENCE
*Editor, The United States News.*

"It is not the size of a public debt but the rate at which it piles up that causes danger of bankruptcy."

EDITORIAL STATEMENT
*Industrial News Review.*

"Private enterprise made this nation as we know it. And if ever private enterprise is killed, this nation will die with it."

EMIL SCHRAM
*Chairman, Reconstruction Finance Corporation.*

"The [RFC] Board of Directors would far rather authorize a thousand loans of $1,000 each than a single loan of $1,000,000."

FLOYD W. PARSONS
*Editorial director, Gas Age.*

"The amount of gas being used to supplant oil and coal in the generation of electric power is now reaching a very satisfying volume."

WALTER W. R. MAY
*Director of Industrial Development, Portland General Electric Company.*

"Calcium carbide from our [Oregon's] limes and coals; fertilizer and smelting flux from our phosphates and our limes, our silicas and our magnesium, are other payroll possibilities if Federal power is not used to electrocute our private initiative and enterprise."

EDITORIAL STATEMENT
*Railway Age.*

"As a constructive force for the improvement of the standard of living of the people as a whole, organized labor has a tremendous potentiality for good; but as yet it has exercised its power in that direction far more meagerly than is generally believed."

ALMON W. LYTLE
*Judge, New York Supreme Court.*

"The many privileges and immunities granted to a governmental entity which date from the early times when the king could do no wrong, should be carefully scrutinized and cautiously given effect in a day when such entities undertake to do much more than kings ever dreamed of doing."

PAUL G. HOFFMAN
*President, The Studebaker Corporation.*

"Like U-boat commanders in a campaign against free enterprise, a minority of business men continue to seek special privilege at the expense of free competitive opportunities."

WENDELL L. WILLKIE
*President, The Commonwealth & Southern Corporation.*

"We [Commonwealth & Southern] do not seek with every business transaction to remake the economic map of the United States—we even have the boldness to doubt if anyone has the wisdom so to do."

D. S. DUNCAN
*Economist, Association of American Railroads.*

"The fact is that unless highways are considered as public utilities and every user of the improved highways is charged fairly for the use of these facilities, we are headed directly for a socialized industry."

LOUIS GUENTHER
*Publisher, The Financial World.*

"No man has yet appeared who is such a mental genius that by any act of his can he change the laws of supply and demand and develop an alchemy which could create wealth without the productive earning power of the people."

R. E. HOWE
*President, Appalachian Coals, Incorporated.*

"There can be no monopoly, in the coal business at least, owing to the grave menace of unfair competition of other sources of heat and energy, such as natural gas, fuel oil, other liquid and gaseous fuels, hydroelectricity, and wood."

JAMES A. FARLEY
*U. S. Postmaster General.*

"Politicians probably stand more abuse, year in and year out, than perhaps any other group of individuals. And yet the success of our democracy in large measure is directly and continuously dependent on them and on their work."

ROBERT A. TAFT
*U. S. Senator from Ohio.*

". . . the government should at least keep out of business itself. Projects like the TVA, to the extent they have actually been undertaken, must be completed and operated, but they can coöperate with private industry instead of supplanting it."

EDITORIAL STATEMENT
*Electrical World.*

"If labor and capital will take a year's vacation from distrust and try a year of working together, they might find to their mutual astonishment that they had a lot in common and that together they could accomplish much more than they could singly."

ELMER A. SMITH
*General attorney, Illinois Central System.*

"There is no more reason for the Federal government engaging in transportation on the inland waterways than there is for the Federal government operating the railroads, unless the time has come when transportation services should be furnished by the government and the deficits made up by the taxpayers."

*Transmission line construction costs can be materially reduced and completion expedited by using Hoosier Crews*

**HOOSIER ENGINEERING COMPANY**

CHICAGO — 46 SO. 5TH ST., COLUMBUS, OHIO — NEW YORK

Canadian Hoosier Engineering Company, Ltd.
Montreal

**ERECTORS OF TRANSMISSION LINES**

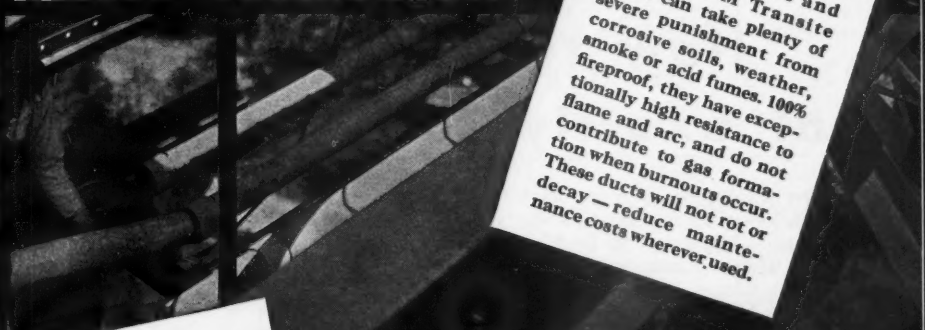
# WHY NOT USE DUCTS THAT...

## COST LESS TO INSTALL

No concrete envelope is needed when J-M Transite Conduit is used underground or in exposed locations. This extra strength means substantial savings at the start. If a casing is specified, thinner walled Transite Korduct saves material costs. And long, light lengths of both Transite Conduit and Korduct speed up assembly.

## RESIST CORROSION

Made of asbestos and cement, J-M Transite Ducts can take plenty of severe punishment from corrosive soils, weather, smoke or acid fumes. 100% fireproof, they have exceptionally high resistance to flame and arc, and do not contribute to gas formation when burnouts occur. These ducts will not rot or decay — reduce maintenance costs wherever used.



## STAY SMOOTH INSIDE

The interior surface of Transite Ducts is unusually smooth, and it *stays* smooth. Joints are tight and snug. Long cable pulls may be made without injury to the sheath...cables can be easily removed.

• • •

There are many other reasons why Transite Ducts assure lower distribution costs. For details, write for brochure DS-410. Johns-Manville, 22 E. 40th St., New York City.

# Johns-Manville TRANSITE DUCTS

FOR LOW-COST ELECTRICAL DISTRIBUTION

# WHY NOT USE DUCTS THAT...

## COST LESS TO INSTALL

No concrete envelope is needed when J-M Transite Conduit is used underground or in exposed locations. This extra strength means substantial savings at the start. If a casing is specified, thinner walled Transite Korduct saves material costs. And long, light lengths of both Transite Conduit and Korduct speed up assembly.

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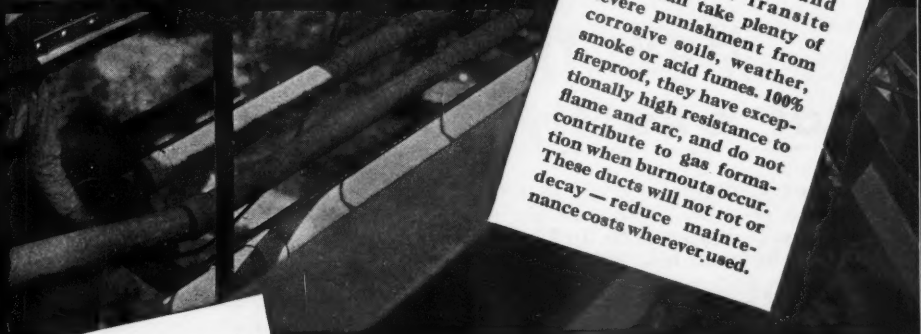

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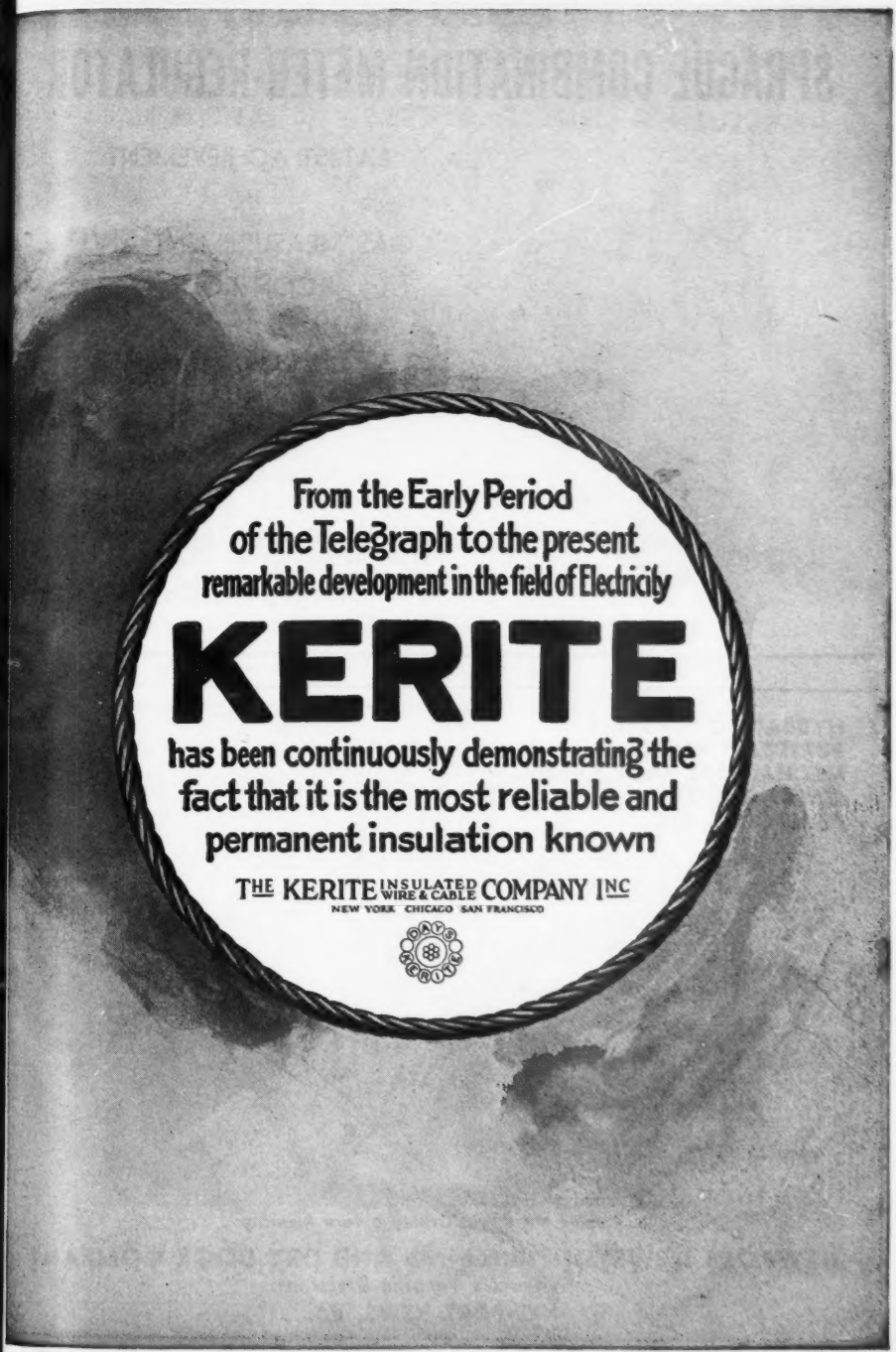
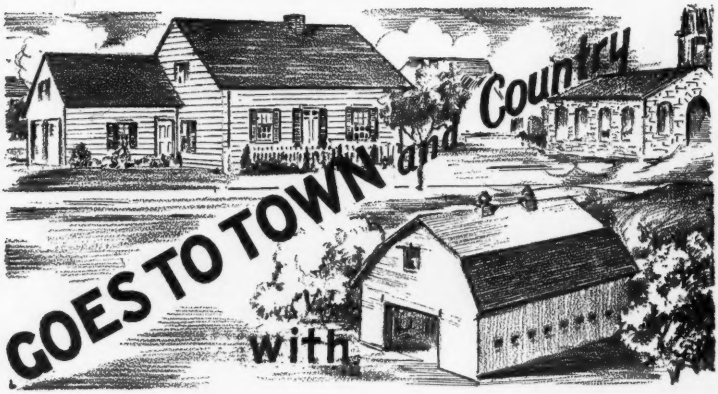
JOHNS-MANVILLE JM PRODUCTS

# Johns-Manville TRANSITE DUCTS

FOR LOW-COST ELECTRICAL DISTRIBUTION



# CRESCENT




# CRESFLEX

## NON-METALLIC SHEATHED CABLE

Step up your business volume and promote adequate wiring in farm communities as well as metropolitan areas—in homes, farm buildings and commercial properties. CRESFLEX gives an all-insulated wiring system that is the most suitable where a low resistance water pipe ground is not available. Its low cost, ease and speed of installation make it the MOST POPULAR R. E. A. WIRING MATERIAL.

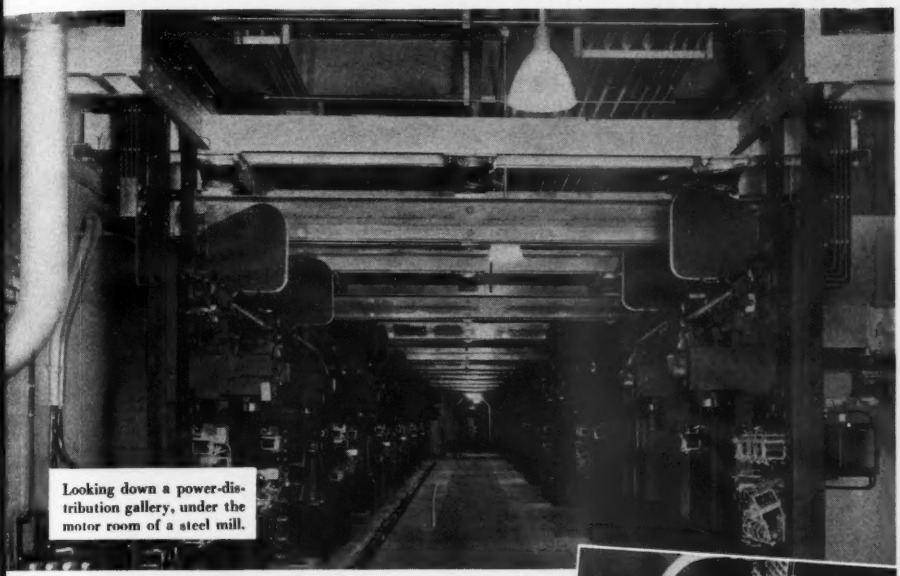
ADEQUATE WIRING SERVES AND SAVES

CONTROL CABLE
DROP CABLE
LEAD COVERED CABLE
MAGNET WIRE
PARKWAY CABLE
RUBBER COVERED POWER CABLE
SERVICE ENTRANCE CABLE
SIGNAL CABLE
VARNISHED CAMBRIC CABLE
WEATHERPROOF WIRE

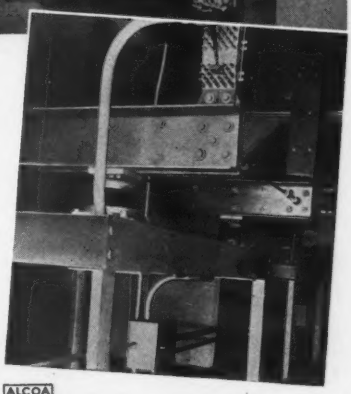
CRESCENT INSULATED WIRE & CABLE CO. INC
TRENTON, NEW JERSEY

All types of Building Wire and all kinds of Special Cables to meet A.S.T.M., A.R.A., I.P.C.E.A., N.E.M.A., and all Railroad, Government and Utility Companies' Specifications.

# Able to make light of sudden, heavy overloads... Alcoa Aluminum Bus



Looking down a power-distribution gallery, under the motor room of a steel mill.



10-inch Aluminum channels, erected back to back with space between for air circulation, form the main 600-volt, direct current circuit in this modern steel mill. Smaller channels are used for the more lightly loaded circuits.

These Aluminum buses provide the conductivity required for handling the large electrical loads. The stiffness of the Aluminum channels enables them to withstand the tremendous mechanical forces set up as loads vary suddenly and widely.

The light weight of Aluminum Bus Bar of all types — tubular, flats, angles or channels — simplifies construction problems; often makes savings possible by permitting wider spacing of supports and lighter construction. Write for prices and recommendations on your bus bar requirements. ALUMINUM COMPANY OF AMERICA, 1134 Gulf Building, Pittsburgh, Pennsylvania.

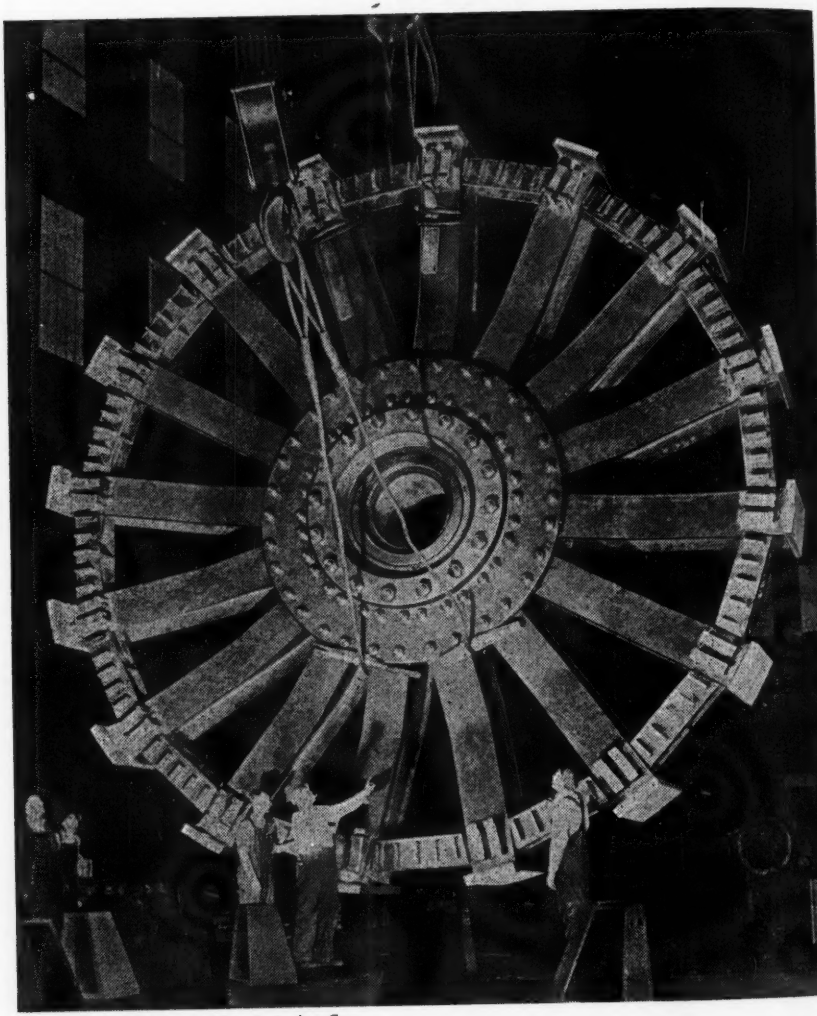
# Utilities Almanack

## MARCH

| | | |
|---|---|---|
| 28 | Th | ¶ *Society of Automotive Engineers opens meeting, Pittsburgh, Pa., 1940.*<br>¶ *AGA Industrial Sales Conference opens session, Toledo, Ohio, 1940.* |
| 29 | F | ¶ *American Gas Association, Accounting Section, will hold convention, White Sulphur Springs, W. Va., Apr. 11, 12, 1940.* |
| 30 | Sa | ¶ *Iowa Independent Telephone Association will hold meeting, Des Moines, Iowa, Apr. 16-18, 1940.* |
| 31 | S | ¶ *Missouri Association of Public Utilities will hold session, Excelsior Springs, Mo., Apr. 17-19, 1940.* |

## APRIL

| | | |
|---|---|---|
| 1 | M | ¶ *Association of Iron and Steel Engineers opens spring engineering conference, Cincinnati, Ohio, 1940.* |
| 2 | Tu | ¶ *National Power Sales Conference will convene, Roanoke, Va., Apr. 25, 26, 1940.* |
| 3 | W | ¶ *Kansas Telephone Association begins session, Topeka, Kan., 1940.* |
| 4 | Th | ¶ *New England Bus Conference holds session, Boston, Mass., 1940.*<br>¶ *American Water Works Asso., Ind. Sec., convenes, West Lafayette, Ind., 1940.* |
| 5 | F | ¶ *American Water Works Asso., Mont. Sec., opens session, Miles City, Mont., 1940.*<br>¶ *Maryland Utilities Association starts spring meeting, Baltimore, Md., 1940.* |
| 6 | Sa | ¶ *Electrochemical Society will hold spring meeting, Wernersville, Pa., Apr. 24-27, 1940.* |
| 7 | S | ¶ *Chamber of Commerce of the U. S. will hold annual convention, Washington, D. C., Apr. 29-May 2, 1940.* |
| 8 | M | ¶ *National Safety Council, Inc., Executive Committee, Public Utilities Section, holds meeting, Roanoke, Va., 1940.* |
| 9 | Tu | ¶ *New Jersey Gas Association convenes Asbury Park, N. J., 1940.*<br>¶ *Midwest Power Conference opens session, Chicago, Ill., 1940.* |
| 10 | W | ¶ *National Association of County Officials starts convention, Houston, Tex., 1940.* |



*Courtesy, Allis-Chalmers Manufacturing Co.*

A Skeleton of Coming Power

Public Utilities
FORTNIGHTLY

VOL. XXV; No. 7 MARCH 28, 1940

# Financing of Securities By "Private Sale"

## A Topsy-like growth which has sprung up since the Securities Act of 1933

BY ALBERT W. ATWOOD

IT is doubtful whether in the entire history of corporate financing any innovation has seemed more revolutionary than the practice of "private sale," or placement, which has sprung up since 1933. It is too early to say whether this change is temporary or permanent; but as the utilities are more concerned, apparently, than any other class of issuing corporations, it behooves everyone interested to give careful thought to the advantages and disadvantages of this new and highly controversial method of raising capital.

The "private sale" almost defines itself. The Securities Act of 1933 requires the registration of securities issued by all but government and railroad borrowers. Specifically exempted, however, are "transactions by an issuer not involving any public offering."

It is around this exception that the practice of private placement has developed, by a sort of Topsy-like growth. Large corporations, utility and industrial, have sold whole issues of bonds, in one case up to $75,000,000, to small groups of life insurance companies, without the necessity either of registration with the Securities and Exchange Commission or the employ-

ment of a syndicate of investment bankers to underwrite the issue.

In general a private sale is determined by the character of the offering. In other words, if an issuing company invites a few buyers in advance to make the purchase, it is a private sale. Naturally there must be no hint of a general invitation to buy. It follows that the number of offerees must be very small. This is not the only factor involved, but it is a very important one.

It is unlikely that the Securities and Exchange Commission would consider a sale private if there were more than twenty-five purchasers; in one case it ruled that sixteen offerees were not too many; in another case it naturally ruled that ten were inside the line; in most actual cases the number has been even less than ten, and the question has not arisen at all.

JUST how widespread the practice of private placement has become is difficult to say, although in course of time the Securities and Exchange Commission will probably publish authoritative figures. News of such sales is usually reported to the Securities and Exchange Commission by the issuers and also released to the newspapers, but it is probable that a number of the smaller sales have received no publicity.

However, various unofficial tabulations or estimates have been made; one of the most conservative is that 16 per cent of all corporate bond financing since 1934 has been of the private sale variety. Another tabulation shows that 20 to 23 per cent of all issues were floated in this way in 1937 and 33⅓ per cent in 1938. Some rather pessimistic investment bankers estimate that one-half the total corporate bond offerings will be sold privately in the future.

At any rate private selling has increased at a rapid pace in the last few years. Although its definition is based on English common-law decisions and recognized in the British Companies Act, it was practically unknown in this country prior to 1934, before which substantially all new securities bought by life insurance companies, as well as by other investors, were publicly offered.

FOLLOWING the passage of the Securities Act in 1933, public offerings for a time wholly disappeared. This was due to a number of factors. To quote from the careful analysis of private selling by Churchill Rodgers, assistant general counsel of the Metropolitan Life Insurance Company:

> Security markets and business generally were still suffering from the depression. Both issuers and underwriters were fearful of the liabilities created by the Securities Act, and issuers were reluctant to incur the trouble and expense incident to registration. During this period, in accordance with an express exemption appearing in the act, the practice of purchasing securities directly from issuers was begun by life insurance companies in response to the solicitation of corporations in need of financing.
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> With the passage of time, general improvement in conditions, and the enactment of certain liberalizing amendments to the Securities Act, public financing was resumed. However, the demonstrated advantages of private financing had been such that . . . (it) remained as an established method.

But this is just the question. Are the advantages demonstrated, as Mr. Rodgers asserts, or rather is it the disadvantages which have been demonstrated? Fortunately the arguments on both sides are readily available; the real question is to weigh the evidence.

As for disadvantages, the investment bankers have seen to it that stu-

dents of the subject shall not lack material, for the investment bankers have been neatly by-passed by this producer-to-consumer movement. The private sale is about as popular with them as the mail order house and chain stores are with the small independent retailer, although it is not my intention to imply that the comparisons are on all fours; the reader will, however, get the point.

WHAT then are the objections raised to the private sale? It is impossible to cover in a single article all the suggested disadvantages which have been mentioned from time to time. In general the point is raised that an important drawback from the standpoint of the issuer is that it foregoes the opportunity of having a broad public distribution of its securities. The best way to make a company widely and favorably known, so it is asserted, is to get the greatest possible number of people interested in its securities.

Wide distribution of securities is unquestionably a factor of strength. It establishes a free and continuous market, serves the important function of affording a correct public appraisal of values, and also aids in the sale and distribution of other securities if future financing is to be undertaken. Each time a company goes to the public through investment bankers it is cultivating a market for future issues. If a company wishes to borrow publicly it is an advantage if previous issues are traded in.

In addition, the point is made that investment bankers supply the company with expert advice and guidance, well worth the extra cost, if any, of employing them. Frankly, it is difficult to say whether these objections are well founded, or not. The practice of private placement is too new to study its effect upon the credit and standing of the borrowing companies involved. Several answers to these rather cogent criticisms have, however, already been made.

FIRST, as to the wide distribution of securities being a factor of strength and especially of good will. The place to secure this good will, it is argued, is in the distribution of preferred and common stocks, not of bonds. It is the relation with the owner which should be cultivated for good will, not the relation with the lender.

As to the other point (namely, the question of marketability and the value of the investment banker's expert advice), the answer is made that private placement so enhances the credit standing of the issuer that it is likely to improve the marketability of other and perhaps junior securities, which may

¶ "IF *five insurance companies take an entire issue of high-grade bonds, not only the individual investor but smaller insurance companies, fraternal orders, endowment funds, and colleges are prevented from buying any of the same issue. Indeed, one financial editor estimates that the "big five" life insurance companies have taken $853,000,000 out of $1,015,000,000 bond offerings in the last few years.*"

perhaps be sold publicly later on. As for the investment banker's expert advice, the reply is made that these firms will be glad to distribute junior securities at their usual profit, if such securities have a market, whether or not they have made a profit on previous issues.

Each reader must decide for himself the effectiveness of these criticisms and of the replies made to them. There seems very little doubt, however, that the willingness of half a dozen of the great life insurance companies to buy a whole issue of utility bonds does give the company a valuable hallmark of quality. Whether this offsets a lack of market quotations for the bonds cannot yet be determined.

THE fact that insurance buying of whole bond issues is usually confined to the better grade of bonds introduces another criticism of private placement which seems to this writer to have almost no validity. The point is made that private placement results in withholding from the public, and even from such purchasers as the insurance companies themselves, the minutely detailed information required in the regular SEC registration statement, and that this is not in the public interest. Several obvious replies suggest themselves.

It is generally known that the more substantial insurance companies thoroughly and capably consider all relevant factors in making an investment, and that the securities purchased by them may generally be described as sound, which indeed is admitted by the critics, because one of the other objections to the private sale is that a large proportion of the best bonds are thus removed from the market and are thus not available to other investors. But this objection wholly nullifies the other; if the bonds are as good as all that, no one need worry because there is no registration statement.

Indeed it is rather ludicrous to suppose that the bright young brain trusters who draw up the registration requirements know more about a sound security than the experienced lawyers and investment experts of the great insurance companies.

BUT no matter how extensive an investment staff a life insurance company has, it does not buy a whole issue of bonds without obtaining approving opinions from independent counsel. In some respects the requirements of the insurance companies are more fundamental than those of investment bankers. There is no intention here of saying that the latter are not careful and do not know their business. But the investment banker's job is to sell bonds, usually as soon as possible, and he must dress them up to appeal to public taste, which changes from time to time, just as the fashions in women's clothes change.

The insurance company, on the other hand, is not interested in investment styles; all it wants is ample protection over a long period of years, and it may be counted upon to know more about real protection than the individual investor or even the small bank, to which the investment banker in turn must sell a large part of his wares.

There is, however, another objection to the private sale, this time from the viewpoint of the issuer, to which the replies are less effective. The result of a private sale is that the corporation cannot take advantage of lower

## Private Selling of Securities

*". . . private selling [of securities] has increased at a rapid pace in the last few years. Although its definition is based on English common-law decisions and recognized in the British Companies Act, it was practically unknown in this country prior to 1934, before which substantially all new securities bought by life insurance companies, as well as by other investors, were publicly offered."*


prices in future years to purchase bonds for the sinking fund, for it is not likely that the insurance companies will let their bonds go for less than the call price, provided no weakness has developed in the issuing company. Thus the issuer sacrifices possible future economies in sewing itself up into the portfolios of a few great institutions.

Somewhat offsetting this disadvantage from the issuer's viewpoint is the fact that it should be easier to effect modifications of restrictive covenants, if the unexpected happens, and to effect readjustments of basic terms in cases of financial emergency. Five insurance companies are easier to reach than several thousand individual bondholders, and it is well known that insurance companies usually prefer to make mutually satisfactory adjustments in case of financial distress rather than to force a company into receivership.

STILL another objection to the private sale is that it gives a few of the larger insurance companies pretty much a monopoly of the highest grade of securities. If five insurance companies take an entire issue of high-grade bonds, not only the individual investor but smaller insurance companies, fraternal orders, endowment funds, and colleges are prevented from buying any of the same issue. Indeed, one financial editor estimates that the "big five" life insurance companies have taken $853,000,000 out of $1,015,000,000 bond offerings in the last few years. The present writer cannot vouch for the accuracy of these figures.

But this monopoly charge does not seem to merit serious attention. It is true that many of the larger bond issues have been offered to and taken by a few companies known to be interested in very large blocks and having the facilities to take them. But many insurance companies of various sizes have made such purchases. Small issues of sound character local to certain insurance companies are particularly adapted to their requirements.

Furthermore, to the extent that investment requirements of the larger companies are met by private purchases, the competition with other companies for publicly issued securities is lessened. Indeed, the smaller companies have compensating advan-

tages, because the relative smallness of their needs makes it easier for them to find satisfactory investments in sufficient amounts. Certainly no general preemptive right of the smaller investor is violated because a few big investors take the big bond issues.

BUT there is a final and wholly conclusive answer to the monopoly argument in that the big life insurance companies are in turn owned by many millions of policyholders who, in the broad but accurate sense, should be classed as public investors and who acquire a beneficial interest in every block of bonds which the companies buy. In other words, the private sale is not private at all; when the New York Telephone Company sold $75,000,000 of bonds to a group of life insurance companies last year, it sold them to some 40,000,000 policyholders.

Whether the issuing companies effect substantial savings by selling privately is a much disputed question. As already noted, the issuer loses the opportunity later on of buying in its own bonds at low market prices. Also the underwriter's spread, or commission, of 2 per cent, is very small when divided over the entire life of the bonds, although it may look pretty big to the issuing corporation at the time the bonds are sold.

But there is a distinct saving in incidental expenses, such as registration and stock exchange listing fees, to some extent in lawyers fees, and especially in printing and engraving. The printing fee incidental to getting up registration statements is a relatively large item, a new one since the Securities Act was passed. Also private sale avoids the preparation of many small denomination bonds and sometimes avoids engraving expenses entirely.

IT must not be supposed, however, that the saving in expenses is entirely a net saving, the reason being that elimination of expense is split between issuer and purchaser. The insurance companies know just what it costs to get an issue registered and they know just what it costs to employ investment bankers. And they insist upon getting a substantial part of the savings for the insurance companies, as they should, considering that they are trustees. However, if the officers and representatives, legal and otherwise, of the issuing company are good bargainers they should probably be able to retain for their company a small portion of the saving.

The fact of the matter is that issuing companies are more and more favoring private sales, not because of real or imaginary economies, but for an entirely different reason. As one sophisticated corporation official said to me in regard to the prices paid for corporation bonds: "Whether you deal with an underwriting syndicate of investment bankers or with a group of insurance companies, they are a bunch of wolves in either case."

THE fundamental reason why utilities and other corporations favor the private sale is that it is simpler, faster, and in many cases far surer than the public offering method. In other words, it saves an enormous amount of labor, worry, and possible trouble for the corporation. To use the inelegant language of one utility official, the preparation of a registration statement is like having a baby. Or to

quote the more careful and dignified explanation of Mr. Rodgers of the Metropolitan Life:

> The preparation of a registration statement with its voluminous exhibits and frequently numerous amendments is a meticulous and time-consuming undertaking. It usually takes from thirty to sixty days to prepare a registration statement. Then, after it is filed with the SEC, a further period of at least twenty days must elapse before it becomes effective. Not infrequently this period is extended by the necessity of filing amendments. The underwriting commitment is not usually actually made until the last few days of this period and then only if market conditions are favorable.
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> Regardless of when the commitment is made, it customarily contains a market clause releasing the underwriters in the event of adverse conditions. The result is that, even though market clauses are infrequently invoked, the final sale of the securities depends on market conditions, so that the issuer can by no means be certain that its securities will be distributed in accordance with its program.

In the jittery markets caused by international disorder, several large utilities have felt that they could not take the chance of waiting several months to comply with all the technicalities of registration. "The insurance companies will go through with the deal, once they agree to it, no matter what the markets do," one utility president said to me. "They put in their own money, and that's that."

Less than a month is frequently adequate time to negotiate and close a private placement. There is expedition and certainty, not only because the insurance companies are but little bothered by changing market conditions, but also because the transaction is simpler all around.

The point is made that if private selling continues to increase, the machinery of investment banking will eventually be destroyed, a consummation that will be bad for all concerned. But even those who doubted the wisdom of by-passing the investment banker have had little choice in the matter. After all there is nothing more pressing and imperative, day after day, in the financial machinery of the country, than the filling of their portfolios by the great life insurance companies; they cannot wait; they must act. The officials of these companies must not be more loyal to their investment banking friends than they are to their own policyholders.

One of the larger companies felt that it had to secure $4,500,000 of a certain issue of utility bonds in 1937 in order to maintain its portfolio. To secure that amount it had to buy from 148 different houses, 5 bonds each from 30 houses, 10 bonds each from 56 houses, and so on. Each such transaction is separate and each must be paid for separately. In a private sale there is one negotiation, one single payment, and few unnecessary operations.

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¶ *". . . The market for bonds has been almost solely institutional. Individuals bought 5 per cent bonds at 98 in the 20's; they have not been buying 3 per cent bonds at 101 and 102 in the 30's. Not only are individuals unwilling to buy at prevailing high prices and low income yields; they have smaller surplus incomes for bond investments, both because of depression losses and higher taxes. The only market for very low-yield bonds is an institutional one; . . ."*

THEN, too, it is a very real question whether investment bankers could have sold issues of bonds, whether refunding or for new money, in recent years to the public at large. If the private sale had not developed it is likely that the bankers would have sold a large portion of these bonds to the very same life insurance companies which have bought them privately.

The reason is obvious: The market for bonds has been almost solely institutional. Individuals bought 5 per cent bonds at 98 in the 20's; they have not been buying 3 per cent bonds at 101 and 102 in the 30's. Not only are individuals unwilling to buy at prevailing high prices and low-income yields; they have smaller surplus incomes for bond investments, both because of depression losses and higher taxes. The only market for very low-yield bonds is an institutional one; what then is more natural than for some of the institutions to save a penny here and there when possible?

A final criticism made of the private sale is that it is opposed to the spirit of the Securities Act. The argument is that the exemption from registration requirements granted to issues not intended for "public offering" was intended to apply to occasional or isolated small local issues, and was not intended to be stretched to the regular practice of insurance companies in taking great issues of national importance.

SUCH may or may not be the case; this article is already too long; there is no time to go into an exhaustive legal or historical inquiry into all the aspects and origins of the Securities Act. But this particular criticism should not be taken too seriously. After all, the Securities Act was designed primarily to protect investors, particularly small investors unable adequately to inform themselves, from fraud and dishonesty in the public distribution of securities. It is stretching an argument painfully thin to try to show that the policyholders of the Metropolitan, Equitable, Prudential, New York, Mutual, and similar life insurance companies need exactly the same machinery of protection that is required for the poor boob who buys a fake mining stock.

The simple truth of the matter is that private sales developed as an alternative method of financing when market conditions made public financing very difficult. It has proved a useful supplement to public distribution and a stabilizing influence on the flow of capital. It is too early to say that the investment banker, who has been so useful in mobilizing capital in the past, has been pushed out of the picture permanently. A modification of the admitted severities and rigidities of the Securities Act, or a return to more normal markets, might easily change the situation.

Mr. Rodgers of the Metropolitan Life says that the life insurance companies would prefer to purchase relatively small amounts in a large number of issues rather than large amounts in a comparatively few issues. But in recent years the volume and number of issues have been very small. With an adequate supply of securities which should accompany the return of more normal market conditions, the tendency might well be to reduce the volume of direct or private purchases by the life companies.

# People Like to Listen— So Why Not Send a Speaker?

*A bank officer discovered many budding orators among his clerks and tellers. So he organized a speakers' bureau and sent a speaker whenever asked by a lunch club, a neighborhood meeting, or a convention—a suggestion to the utilities, including a recommendation that political and other sleeping dogs be avoided.*

By JAMES H. COLLINS

Once upon a time there was a bank, and its young clerks and tellers pursued all sorts of hobbies.

Among them, there was a group that liked public speaking. There were a dozen or more budding orators who attended debating classes, learning to take any side on every topic, and talk for it, or against it, fluently and without embarrassment.

For practice, they entered debates wherever they were going on, and with the keen edge of youth, would tackle any problem: social, economic, political —even occasionally financial. Quickly they would marshal all the pros and cons, whichever was assigned them, and labor to persuade the audience, however small, that their side was the only one worth consideration.

That was the way the game was played and, as in other games, they could dish it out or take it with equal cheerfulness.

Their enthusiasm attracted the attention of a bank officer, who got to thinking.

"All that energy! Could it be turned to some useful purpose? There's hardly a week but somebody calls me up and asks if I know where to get a speaker for a service club's lunch, a parent-teachers' meeting, a convention. People seem to have a boundless capacity for being spoken to, and here we have speakers—there must be a way to make the supply fill the demand."

And there was.

He talked with his young orators, found out what they had talked about, and made a list:

*Jones*— Has discussed the tariff, the business cycle, city affairs—has a good speech on "Does Speculation Serve Any Useful Purpose?"

*Smith*—Home economics; What I'd Do if I Had a Million Dollars (investment) and How Much of Your Income Should Be Saved.

*Johnson*—Has been abroad, and explains invisible exports, foreign trade, how to see Europe economically.

Each speaker's willingness to answer requests, noon and evening, was noted down, and thereafter when anybody asked the bank for a speaker, one of these volunteer orators was sent.

TODAY, many California banks, both the large branch bank systems and individual banks, have some sort of speakers' bureau, and have become known for their ability to send speakers, especially on short notice, where a scheduled speaker has to cancel his engagement, or a meeting is hurriedly organized.

Any utility company is welcome to this idea. It isn't patented, and can be adapted to the spontaneous oratory generally found in a gas, electrical, or street railway corporation, or might be maintained as a mutual convenience by several utility companies in a community.

Somebody who is interested in listing the available speakers, with their favorite topics, and running the bureau, and the thing's done.

Through the years, these bank speakers have done much to create understanding of banks, and good will. They went through the "bank holiday" that followed President Roosevelt's inauguration in 1933, when people wanted to know what bank men thought. They thought themselves that the closing must have given bank employees a splendid holiday, whereas any bank man who went through that crisis will assure you that he never worked harder in his life.

Don't get the notion that these speakers go around defending banks, dispelling the popular prejudice against them, or carrying on propaganda.

First, the organizations that ask for speakers generally name the subject they want to hear discussed, and it may be social, political, educational, international.

IF financial subjects are selected, the audiences usually want to hear how some department of a bank operates. There is a wide interest just now in home loans, what the FHA requires, how much money is needed for a down payment, how long a mortgage can run, what loan officers do to help the home buyer pick out an honestly built house and an adequately restricted lot.

There is a demand for information on the new item that appears on their monthly checking account statements, the charge for service—until the depression forced it, few banks made a monthly charge for the amount of service each depositor required, and the public had been led to believe that banks got rich on free service. It is a subject easily explained, and people understand that, even when they pay for the handling of checks, it is one of the cheapest time-saving conveniences they buy.

Business gatherings are interested in foreign trade, and the documents with which it is carried on, and in the many new loan services developed for the merchant, the manufacturer, and especially the instalment goods retailer, since money became so cheap and plentiful.

What a bank does for its customers, and how to use its services to the best

advantage in business and family affairs, is the burden of the song, and many of the topics could easily be transposed to utility services.

"Why Should I Make a Will?" is a popular subject, and the other day an interesting consequence followed a talk on wills. In the audience at a business association's annual dinner was a manufacturer who, during the depression, had made a sizable fortune with a new invention. More than once he had been advised to make a will, but said, "I have only my wife and boys—if anything happens to me, they'll inherit all I've got." But listening to a bank speaker whose daily work was handling estates, he discovered that, if he died without a will, after much readjustment of his affairs, his money and his business would not be enough to meet inheritance taxes — his boys would still owe the government money.

BANKS, light and power companies, and other organizations that enter into the daily lives of people, mean very little to them beyond the monthly bill or statement. It is assumed that, because they are big, they must be rich, that probably their charges are figured to make fat profits, and that being corporations, they can take care of themselves. The family wrestling with grocery bills, rent, instalments, and the prospects of a vacation does not dream that business executives wrestle with precisely the same items on a large scale.

Bank speakers make a hit when they are able to step into the family wrestling match with the budget, and lend a hand with information gained in the handling of hundreds of similar problems.

One of the Los Angeles high schools brought students and their fathers together at a lunch. The money relations of fathers and sons was one topic to be discussed, and a bank was asked if it could send a speaker.

How much allowance should a boy have? What control over his money? How far could he go in earning money outside of school hours without harm to his studies or health? How much should a boy save out of an allowance? What was the sensible way to provide for a boy so he would not have to ask for money?

One of the bank's officers volunteered for this assignment, and took his two sons with him. His explanation of how they managed the money problem between them was so practical that other schools wanted to hear about it.

THE demand for speakers is constant among service lunch clubs, parent-teachers' associations, neighborhood improvement organizations, chambers of commerce, and business associations.

Some of these organizations, like the

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service clubs, meet every week, except during the summer, and, with forty or more scheduled meetings, need a great many speakers. They cannot afford paid speakers, and so volunteer speakers and volunteer topics are welcome.

They are maintained for contacts, enabling the man tied down to his desk to combine lunch with acquaintanceships, a chance to learn something about the community he lives in, and some entertainment.

Their speakers' committees are constantly on the lookout for variety, and an offer to put on a "show" with speakers from a single corporation, to give some idea how a gas or electrical company is run, usually meets with a cordial response.

Neighborhood associations and business organizations do not meet so often —sometimes their annual dinner is the chief gathering. They are interested in subjects like taxation, city management, community improvement, employee relations, operating economies, new business methods. Bank speakers are often able to point out advantageous ways of borrowing and financing.

Utility corporations supply the same people with services, and both in homes and business plants have knowledge of the latest methods in installation and operation. Speakers from sales and service departments can tell audiences things they will find it well to know.

Parent-teacher and neighborhood improvement associations are interested in community problems from the human angle.

CERTAIN organizations, like women's clubs, chambers of commerce, and fraternal lodges, seek a speaker for their annual dinners, because regular programs occupy them at other times. They like an outsider, preferably a "keynoter," to discuss some current question, local or national.

Banks receive a good many requests for speakers on live political issues, and in California some of the banks look upon them as too hot to handle, and courteously decline to participate.

During the famous Ham an' Egg campaign for old-age pensions last fall, everybody wanted to hear speakers on that issue.

One large banking organization stated its position in declining speakers, saying that the question was one to be decided by voters, and that the bank did not want to influence either side.

But another large banking system had more than twenty speakers explaining the cold facts about the proposition from a banking and legal standpoint.

It will be remembered that the old-age pensions were to be paid in warrants, not money. Under existing bank laws, no bank could handle these warrants in any way, and explanation of the law did not involve the bank on either side. While political issues are hot during a campaign, they are generally forgotten after the election. Impartial statements of law bearing upon them do not seem to create any lasting prejudice in the public mind.

STILL, these issues are "loaded," and a utility corporation may well survey its popular status at the time. A company that happens to be the center of a rate controversy at the moment might be regarded as taking sides, where another company, with no controversy afoot, would be regarded as rendering a service, throwing its beam of light on a vexed question.

## Bank Speakers

*". . . many California banks, both the large branch bank systems and individual banks, have some sort of speakers' bureau, and have become known for their ability to send speakers, especially on short notice, where a scheduled speaker has to cancel his engagement, or a meeting is hurriedly organized. Any utility company is welcome to this idea. It isn't patented, and can be adapted to the spontaneous oratory generally found in a gas, electrical, or street railway corporation . . ."*

It is always good policy for a speaker to explain, when discussing controversial issues, that he speaks for himself, not his institution, and as a voter and a citizen endeavoring to contribute information that will help others make the best decision for the community.

Another subject, in keen demand, and even hotter to handle than political issues, is prophecy.

"How will business be the coming year?" asks the Third Ward Merchants' Association of the guest speaker; and the fact that he comes from a bank, where he is manager of the safety deposit department, qualifies him with them as a man peculiarly able to answer such questions.

And a utility speaker, after studying the company's curve of meters for the past thirty years, discovering what he thinks is a cycle of rises and decreases, may fall for the notion that he has found a basis for predictions. If so, people will listen to him with respect, because the rise and fall of meters has direct bearing on their rents, sales, employment, production, and pursuit of happiness.

BUT with all the present-day refinements of statistics, and the theories of cycles and what not, we do not seem to be more certain about what is going to happen than were our grandfathers. Predictions are easy—and the one thing certain about them is that something else always happens, something that nobody prophesied.

If such curves and statistics as the company may have are studied to find out, not what may happen, but what has already happened, the speaker may be able to give his audience far more useful information.

In California, just now, there is

much speculation about what may happen to the price of oranges, which has not been very satisfactory lately.

A bank officer who deals with orange growers, invited to address a gathering of growers, discussed prices from the viewpoint of costs. Through making loans, he had secured figures showing that orange groves yielded all the way from 150 to 700 boxes per acre, with variations of 200 boxes in the average yields. Also, there was a wide variation in quality, some fruit being high grade, some medium to poor, and quality affects price.

Examination of management methods showed that both yields and quality were to a great extent within the grower's own control, such as fertilization, spraying, cultivation, cover crops, the use of up-to-date machinery, and so forth.

MONEY plays a big part in growing oranges at a profit—a grower may spend two or three hundred dollars an acre before an orange is picked. Accounting plays a big part. So, this bank speaker was able to show that good accounting and progressive methods not only made profits, but that the grower with good accounting figures for the past five years was able to step into a bank and borrow money with greater facility than the one whose accounting was careless.

In the industrial departments of utility corporations similar figures would probably show the same situation in local manufacturing, storekeeping, real estate management, and other lines. The variations between good, indifferent, and poor equipment, and in costs, quality, speeds, sales, and like factors, would make the story.

It will be asked, "What happens to their work while these bright young men are filling speaking dates?"

The answer is, frankly, that it takes time, and most often working time from the business day, because many of the speakers talk at lunch meetings. If lunch starts at 12 and is over by 1:30, there are two and a half hours out of the middle of the day. If it happens often—

But where there are a couple of dozen speakers available through a bureau, it doesn't happen too often. They alternate, sharing the assignments. Also, the capacity of the speaker is limited—if he talks too often he grows stale on his subjects.

The cost in time is easily controlled, and against it must be credited, not only the good will to the business, but the benefit to the speakers.

PUBLIC speaking of this kind, they have found in California, gives the speaker generous returns for the time and work put into it, counting the time contributed by his organization.

In the first place, he makes a lot of new friends for himself and his institution. When the company has a problem, he may know somebody who can help solve it, a listener at one of his talks. When people in his audiences have a problem, the concern he works for is no longer an impersonal corporation, but one in which they know a man, the fellow who spoke at that meeting, who seemed well informed and human.

Contacts with audiences increase his knowledge of the topics he talks about. Anybody can write and deliver a talk about his work, whether it be meter reading, loans, peak loads, or escrows.

But deliver that talk to an audience, and invite questions, and it will quickly be discovered that people have different slants on the subject. The technicalities that interest the speaker are not as important to an audience as its own questions. It asks how meters, peak loads, loans, or escrows can be helpful in its own everyday affairs. The technicalities of the subject, the wonderful progress that has been made, the size and complexity of the company's meter or escrow department, are secondary to "Me and mine—what is it going to do for me?"

The speaker learns what's on the public mind. He learns how to adapt his subject to everyday people. He learns how to present things so people will be interested. He learns things that cannot help but make him a better employee or officer.

In California banks, it is the practice to canvass the whole organization at least once a year, asking for volunteer speakers, listing their subjects, and assigning beginners to small audiences, often in their own neighborhood, to help them grow accustomed to speaking. Employees are also asked to refer all requests for speakers to the bureau, and to report outside speaking engagements that they accept, in the interest of coördination.

Many employees, unable to speak, are capable of singing or playing instruments. The banks list their glee clubs, quartettes, instrumental ensembles, and soloists, and assign them for entertainment, with corresponding good will for the institution. Musical employees get great pleasure out of these performances with real audiences, and in one case a bank radio program was made up entirely of such entertainers.

As propaganda, reaching masses of people, and molding their opinions, overcoming popular prejudice and misunderstanding, these speaking activities work no particular wonders.

A customer may have heard a dozen speakers from the bank, or the company, and liked them, but if his loan is called, or he thinks his meter is fast, the corporation is a corporation still, and he is hot under the collar.

Yet, if he knows a man in the company, a speaker he shook hands with after the talk, he can at least take his trouble to a man, and probably get it amicably settled.

Speakers do not reach millions. This is not a mass audience proposition.

But they do reach thousands in the course of a year, and mostly key people, giving them practical information about company methods, policies, and problems, and letting them know that

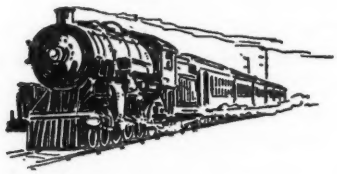
¶ "Neighborhood *associations and business organizations do not meet so often—sometimes their annual dinner is the chief gathering. They are interested in subjects like taxation, city management, community improvement, employee relations, operating economies, new business methods. Bank speakers are often able to point out advantageous ways of borrowing and financing.*"

a business organization, no matter how big, is still composed of men and women.

This is bound to have its results in better public understanding.

After all, the thing was started originally to utilize all of the squeals in a large organization.

Regard it as by-product. Is it not well worth utilizing?

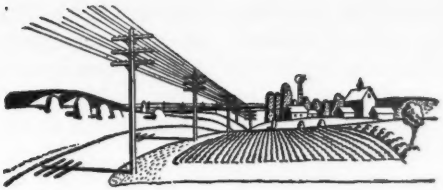


## Public Interest in the Railroads

"IT *is quite obvious that practically everyone is vitally interested in one direction or another in the railroads. The nationalization of this $26,000,000,000 industry—reaching into every part of the United States—would concentrate great and unprecedented powers in the hands of the Federal government. Moreover, it would create a powerful and menacing bureaucracy. This can only be appreciated by the fact that nationalization would add around 1,000,000 railway employees to the number of persons now on the Federal payroll. The Federal government already has over 850,000 civil employees on its regular or permanent payroll. Therefore, if the government should take over the railroads this would have the effect of more than doubling the number of permanent government employees. Then when the dependents of this great army are added, it would mean that somewhere between seven and nine million persons in the United States would be dependent upon and subservient to the political party in power.*

*"There is no popular demand for government ownership and operation of the railroads; on the contrary, public sentiment seems to be overwhelmingly opposed to it, according to the information contained in fairly recent surveys made by the Gallup poll,* FORTUNE *magazine, National Industrial Conference Board, Transportation Conference, and the opinions expressed by a number of other state and national organizations. Nevertheless, the gradual financial disintegration of the transportation machine in the last few years of the depression has convinced a number of well-informed students of this problem that government ownership and operation of the railroads will sooner or later be inevitable. Now the war might be the excuse to take them over."*

—EXCERPT *from report of Railroad Securities Committee, Investment Bankers Association of America.*



# Extension of Rural Lines As a "Good Neighbor" Policy

*In a region where thirteen coöperative electric associations are operating and where TVA power lines threaten to thread their way into new areas, a privately owned electric utility company, says the author, continues to increase its rural electrification plan at a profit and is making plans for building more lines this year.*

By W. CLARENCE ADAMS

With the increasing encroachment of the Tennessee Valley Authority on new areas and the rapid expansion of government-financed coöperative associations into numerous districts, the building of rural electrification lines into new communities in the mid-South by private electric utilities is something that must be undertaken with caution and after careful planning has been exercised, if profits are to result. But to Harvey C. Couch, president of the Arkansas Power and Light Company, these two strong fields of competition have served only to develop a stronger spirit of initiative and determination.

Today, this private electric utility in Arkansas has a most efficient rural electrification policy, designed on the "good neighbor" basis. That this policy is sound is borne out by the fact that the company is threading its lines into new districts each month on a profitable basis, with a larger building program planned for this year than at any other time in the utility's history. Although the Arkansas Power and Light Company started its rural expansion policy hardly five years ago, it already has fed its power lines into 56 of the 75 counties in that state.

The future possibilities of these projects, scattered throughout Arkansas, and particularly in the northern district where fruit, live-stock, and truck production are the principal means of income, have not as yet been fully determined by the company's engineers; but the program, in general, apparently is deemed successful, as its principles are being picked up by several other electric utilities in the Southeast, the Middle West, and also by the Rural Electrification Administration in Washington.

Perhaps it is because Harvey Couch himself was reared on a farm, spent many weary hours in his youth

following the furrow behind the plow, that he has been inspired to formulate the effective rural electric policy of his company. Because he understands the problems facing the average farmer in Arkansas, he knows why they cannot spend any great sums on electricity, which, heretofore, they have considered a luxury beyond their reach. Knowing these conditions, he has sought to send power into these low-income areas at the lowest possible figure. But he has not stopped at that point. He has made it possible for each farm family to have its home wired at practically no cost, except labor, and he has gone out of his way to seek new means of income for the farmers by use of electricity. Built on this foundation, the company's rural expansion policy has increased in importance each year since the first low-cost experimental project was started in 1935.

To understand fully the success of this rural electrification policy, it might be well to explain some features of the company's "good neighbor" spirit which probably is chiefly responsible for its success in this field.

IN making surveys for new rural lines, engineers frequently found that projects were not economically sound because less than three customers to the mile could be secured. In many small communities, where surveys showed a potential customer list of perhaps 75 to 100, less than 10 or 15 customers were secured.

After months of planning, the company projected the plan whereby each farmer along the route where a new line was being set up could put in sufficient labor with the construction crew to guarantee the wiring of his home without cost. Thus, two objectives were accomplished: The building of lines at lower costs, by use of farm labor, and the acquisition of hundreds of additional customers along the new lines.

Although not all customers are interested in helping to build lines in exchange for wiring of homes, nearly 90 per cent are interested and are gratified over the opportunity to obtain this service without cost, except labor. The small per cent preferring to pay cash helps to balance the program and make it more efficient.

Engineers of this utility have found that practically every farmer-customer may be employed in nontechnical tasks in building of lines, such as hauling poles, digging holes, setting poles, clearing rights-of-way, trimming trees, driving trucks for pole line crews, and other necessary duties. Often, some customers working on projects are not so efficient as regular crew members of the company, but Mr. Couch points out that the increased number of customers connected as a result of this feature more than offsets any drawback in this connection.

THE power company has not limited the prospective customer to the one item of wiring his home without cash outlay. The customer may put in sufficient labor to pay for attractive and inexpensive fixtures and buy a few appliances, as lamps, fans, and irons in addition.

The farmers themselves, who have been found most eager to obtain the benefits of electricity, feel closer to the company as a result of helping to build the lines, although their services are well repaid.

## EXTENSION OF RURAL LINES AS A "GOOD NEIGHBOR" POLICY

Backing up this phase of its rural electrification policy, the Arkansas Power and Light Company, through countless experiments in low-cost construction, has developed a particularly efficient low-cost line which is more economically feasible for use in the sparsely populated districts of north Arkansas, where the utility's principal stress is being laid at present. In these districts, where there are only from two to four customers to the mile, it is not necessary to build high-cost lines. The weather hazards, such as ice, sleet, snow, and tornadic winds, are less severe here in north Arkansas than in other districts in the Middle West, the North Central states, or in the Northeastern states.

Not so many years ago, few rural electric lines were built for less than $1,000, and few were constructed for even that figure, but the Arkansas Power and Light Company is today building efficient rural lines for approximately $525 per mile.

WHEN the company first started experimental work in rural electrification, lines cost about $900, with the figure later being scaled down to between $700 and $800. But an even lower figure was necessary to gain customers. So engineers of the utility were requested to develop a new low-cost line.

The result was the design of what is said to have been the first of the new low-cost lines developed especially for farm use with the phase conductor carried on a pin on the top of the pole and the multigrounded neutral conductor carried on a bracket and fastened to the pole at a lower level. Engineers found, after many experiments, that not only could conductors be carried without crossarms, but transformers as well might be installed also without crossarms by using the low-cost, rural, roof-type bushing transformer with a bracket for mounting the transformer directly on a through bolt.

USING low-cost lines to send electricity into homes of farmers, dairymen, poultry growers, and live-stock producers, and allowing customers to participate in construction to earn sufficient credit for wiring of homes, are vital points in the Arkansas Power and Light Company rural expansion program, but there are many other factors that have entered into the company's policy that make it practicable. They all come under one head—that of loading the lines to make them profitable to the company in supplying current.

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MR. Couch expresses his meaning of the "good neighbor" policy as "getting a little closer to our people." And that is just what the officials of the utility try to do in the communities where power lines are threaded. He points out logically that coöperation means a "big thing" when it comes to building and loading rural lines. Without the coöperation of the customers, little can be accomplished.

When a power line project is proposed, meetings are scheduled at school houses, churches, and community halls over the district through which the lines are to serve. Sometimes these meetings, which officials of the company attend to explain details of the project, are turned into social gatherings with old-fashioned "pie suppers," and the like. The spirit of fellowship is fully exemplified.

Sometimes the company must make concessions to gain the good will of the prospective customers. For example, Mr. Couch points out that at one such community meeting, the question concerning extending service to a near-by community church arose. Company officials explained that if the pastor would speak to his congregation and persuade several of the men to donate their services for a day or two in building the lines in that vicinity, the church would be wired and fixtures installed at no cost to the church. This opportunity for coöperation has now been extended to all communities and, as a result, the ministers are some of the most loyal boosters of the company's rural expansion program.

UP in the hills of north Arkansas, it is often not easy to obtain representative groups in one place for meetings, especially in the winter months, owing to the thinly populated areas and the great distances some must travel to attend. But the company found that if a washing machine was offered to the family attending with the largest number of children, or a refrigerator was awarded to the man and wife bringing the largest number of children under fifteen years of age, the attendance would be all that was expected.

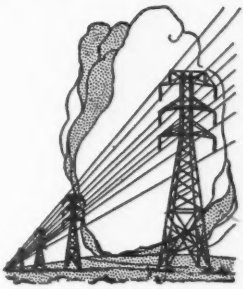
Whenever a new project is placed into service, the throwing of the switch to energize the lines is usually celebrated with some sort of service, followed by a barbecue, basket lunch spread for all, or a pie supper. These are always well attended by rural folk and usually an official of the company appears on the program for a talk.

Because most rural customers, particularly in the north Arkansas region and other districts in the Mid-south, are reluctant to use more than the minimum of electricity at first, the Arkansas Power and Light Company has attempted to solve this situation by giving intensive study to the problems of the farmers and working out projects which will increase their incomes through use of electrical appliances. This results in the lines being loaded to a higher and more profitable level and, at the same time, farmers themselves are benefited.

WHERE most electric utilities prefer to work directly with county agricultural agents and home demonstration representatives in each county, the Arkansas Power and Light Company, while always coöperating with these groups, works directly with the farmers. The company has a separate

## Use of Low-cost Electric Line

*". . . the Arkansas Power and Light Company, through countless experiments in low-cost construction, has developed a particularly efficient low-cost line which is more economically feasible for use in the sparsely populated districts of north Arkansas, where the utility's principal stress is being laid at present. In these districts, where there are only from two to four customers to the mile, it is not necessary to build high-cost lines."*



department, the Rural Development Department, under the direction of W. M. Shepherd, which does nothing but aid farmers and supply information on improved methods of operating farms. The greatest task of the department is to aid farmers to find new and enlarged markets for their products, because this is what the farmer-customer is vitally interested in at all times.

In the dairy regions, the company has been instrumental in securing creamery, cheese, butter, and dairy products' plants. These demand greater milk outputs from farms. And to the farmers seeking to supply milk to the plants, the company's representatives have gone and demonstrated how dairy cattle, having access to water at all times, produce more milk, how greater profits can be effected with cheaper feeds, and also how profits can be stepped up by milking larger herds. This all means, of course, that the farmer must install water pumps, feed-grinding machines, and milking apparatus, all of which are operated by electricity.

Mr. Shepherd points out, for example, that a very efficient hammer mill is now on the market, selling for less than $70, which will do a satisfactory job of grinding small grains for the farmer whose grinding requirements are not too large. It has a capacity of up to 700 pounds of cracked corn per hour and automatic feeding arrangements make unnecessary the attention of an operator.

"We estimate," Mr. Shepherd goes on to say, "that a farmer with 5 cows, 4 horses, and 100 hens can take care of his grinding requirements in about one-half day's grinding per week. If he has more stock, he probably should buy a larger mill."

Where farmers market considerable produce, as well as dairy and poultry products, the Arkansas Company's representatives work with these customers to point out that milk refrigeration, egg refrigeration, and refrigeration of other perishable products of the farm will return greater savings than perhaps any other application of electricity.

"The milking machine alone," states Mr. Shepherd, "will save 35 to 50 per

cent of the milking labor. It can be powered by a one-sixth horsepower motor for individual units up to one-half horsepower per cow for centralized units. Energy consumption is about one and one-half to three kilowatt hours per cow per month.

"The cream separator and churn can be driven with a one-eighth to one-fourth horsepower motor at an average consumption of around one-half kilowatt hour per thousand pounds of milk. Putting it on a yearly basis, can the average dairyman afford to turn a separator by hand for over 200 hours a year when a one-fourth horsepower motor will do it for about one cent an hour?"

WELL, that is one thing that the company representatives must convince the farmers about. But, usually, when profits are concerned, it is not difficult to induce farmers to take advantage of these appliances.

Greater use of lights by poultry growers in brooders, incubators, in poultry houses, and for other uses, has brought about a good increase in current. For instance, it is pointed out that the electric incubator is about the only thoroughly satisfactory incubator, and the energy consumed per thousand eggs on mammoth machines will be as low as 20 kilowatt hours. On the smaller machines the average will go as high as 180 kilowatt hours per thousand eggs. The positive temperature control, the ventilation, and humidification are not even approached by other types of incubators. The increased hatchability of chicks will almost pay the entire cost of operation.

Thus, these farmers in north Arkansas now being served by the Arkansas Power and Light Company, as well as those in eastern and central Arkansas, are principally interested in dairy and beef production, poultry growing, truck farming, and fruit production. Most of them own their own homes. They cannot spend any great amount immediately for appliances. None of the farmers can be expected to buy machines and motors at first which will step up consumption on the lines. But gradually, with each customer installing a few appliances, such as these just mentioned, greater power consumption is obtained by the utility.

MORE recently the Arkansas utility has gone into the truck- and fruit-producing regions to see what can be done in increasing power consumption. It has found that by irrigation, electrically heated hotbeds, and refrigeration, profits can be increased here for growers. In fact, this field has hardly been touched.

These are only a few of the many instances where the company has sought and obtained greater use of power on its rural lines. With the customers safely started, the company need not worry about them in the future. They will be gradually increasing their list of appliances without further encouragement.

The company has also found that organizing of county-wide poultry and dairy associations has been a great benefit in promoting increased interest in these fields. Marketing surveys and set-ups are conducted at frequent intervals.

Back in 1937, when there was much talk about organizing rural coöperative associations in Arkansas, the Arkansas Power and Light Company

made a careful survey of needs in north Arkansas, in the sparsely settled Ozark hills, and decided it would pay to build lines. Accordingly, representatives went to Washington with plans and, shortly, the Rural Electrification Administration granted the company a $323,000 loan to build rural lines in seventeen north Arkansas counties. The lines constructed totaled 503.2 miles to supply 1,652 consumers.

TODAY nearly 10,000 farms in Arkansas have been electrified by the Arkansas Power and Light Company in its far-reaching rural electrification program which practically covers the entire state, with lines in 56 of the 75 counties. The company has slightly more than 1,700 miles of rural lines, with approximately 3.6 customers to the mile. Except for a few hundred rural customers which had been added since the company became interested in rural electrification work in 1926, most of the extensions have been made since 1935, at which time the company embarked on its intensive rural expansion program.

So successful has the company's policy of permitting farmers to participate in construction of new lines become, that only recently the North Arkansas Rural Electric Coöperative Corporation, which operates in parts of Fulton, Baxter, Izard, and Sharp counties in north Arkansas, has announced it will start building lines, financed by REA funds, under this plan. C. O. Falkenwald, director of the examining division of the REA in Washington, who visited the region and went over details of the program, said members of the coöperative will be allowed to work on construction of future projects of the association, contributing their services in exchange for credit on such items as house wiring, purchase of appliances and equipment, installation of plumbing, and electric bills.

"When a member has earned $30, he may draw on his money to help defray cost of wiring his home or buying appliances," officials of the coöperative pointed out. "If this amount is insufficient, he may borrow the balance from the coöperative. If there is need for additional labor, he may be given the opportunity of earning more than $50."

IN regions similar to those in Arkansas and other districts in the Southeast, the Middle West, Southwest, and possibly some sections in the North Central states, the features embodied in the "good neighbor" plan for rural electric expansion can be used effectively and certainly to a decided advantage by electric utilities catering to rural expansion.

¶ "WHERE *most electric utilities prefer to work directly with county agricultural agents and home demonstration representatives in each county, the Arkansas Power and Light Company, while always coöperating with these groups, works directly with the farmers. The company has a separate department . . . which does nothing but aid farmers and supply information on improved methods of operating farms.*"

When Harvey Couch left Washington in 1935, after serving with the Reconstruction Finance Corporation since 1932, he started his company on the road to rural electric expansion as a profitable enterprise, although previous to this time he had been very much interested in the possibilities of extending lines into rural sections.

Mr. Couch believes that more abundant life will prevail on farms if the conveniences of the city can be brought to their doorsteps. When radios, electric refrigerators, running water, bathrooms, adequate lighting facilities, and other conveniences such as city dwellers enjoy, can be installed on farms, then Mr. Couch believes that farms will be a place where sons and daughters, who were reared on farms, will want to go back to the farms to live. This will stop the trend from the farms to the cities. Perhaps it is because Mr. Couch was reared on a farm himself and understands the hardships of the average family that he desires to put power to work in these districts; but, nevertheless, the program which his company has formulated and put into practice is successful and is bringing profits to the company, although the rural electrification program has only just started.

THE company has just issued a statement indicating that it will spend approximately $1,500,000 in 1940. The outstanding project will be construction of a 70-mile transmission line, carrying 100,000 volts from Batesville northward through the White river valley to connect with the company's Ozark division. The project, to involve about $500,000 in labor, materials, and other costs, will serve some of the rural projects just completed in north Arkansas and furnish needed power for the rapidly increasing needs in the area where the company for the past three years has actively been at work in building rural lines.

In regard to rural expansion, Mr. Couch said: "During 1940, we plan to continue our rural electrification program and extend lines to 2,000 more farm homes. This program will be partly in coöperation with the government's program and partly in line with the company's own rural electrification efforts which pioneered this development in the South."

THUS, in a region where thirteen coöperative electric associations are now operating and where the TVA power lines threaten to thread their way into new areas, the Arkansas Power and Light Company has continued to increase its rural electrification program at a profit and is making plans for building more lines during the coming year.

It has taken something more than ordinary efforts, however, and had it not been for the company's "good neighbor" policy, perhaps its rural projects today would still be in company notebooks as "future projects to be considered."

With farm incomes increasing from enlarged live-stock, poultry, and truck production—industries which use considerable electrical power—it is within reason that electric utilities in other districts of the nation might be interested in the principles of this policy which has demonstrated its worth to the Arkansas Power and Light Company.

# Wire and Wireless Communication

FOLLOWING the lead of its subcommittee, the Senate Interstate Commerce Committee on March 7th approved a resolution of Senator Green of Rhode Island, calling for a wide investigation of wire tapping and the use of recording devices.

Senator Green recently told the Senate that he wanted to find out about wire tapping in Pennsylvania, Massachusetts, and Rhode Island, involving public officials. His purpose would be to formulate legislation to control such activities.

The Rhode Island Senator declared that a certain New York detective agency had been active in wire-tapping practices for political purposes. Wire tapping recently was condemned in a U. S. Supreme Court decision which announced that the use of such a device even by government law enforcement agents is illegal.

Political turmoil involving communications service also bobbed up in the House on the same day that the Senate committee approved the Green resolution. In the lower chamber the Representatives roared their approval of an amendment to the Interior Department's appropriation bill which would prohibit any broadcasting intended to influence Congress.

Representative Ed Gossett (D.) of Texas offered the amendment which was adopted almost unanimously. He said: "My purpose is to protect Congress from these harmful political broadcasts. There are eight persons employed in the [Interior] Department's radio section at an annual cost of $20,000.

"The salaries of these men and the radio time are paid for out of Federal funds. The broadcasts have been especially directed towards influencing Congress in connection with the Cole oil control bill pending in committee. Such an activity is pernicious."

REPRESENTATIVE William P. Cole, Jr., (D.) of Maryland, author of the bill which would give Secretary of Interior Ickes vast powers over oil production, remarked that he condemned the broadcasts as much as anyone. A typical broadcast, entitled "What Price America," was cited as an hysterical attack upon the petroleum industry.

The script of this broadcast called for opening sound effects suggesting "utter confusion and hysteria of a population." It sought to present the helplessness of the people if gasoline, oil, and gas reserves were suddenly depleted. There was the implication that this catastrophe would fall upon the United States if Secretary Ickes were not immediately given control over oil production. The narrator declared that present oil reserves would last only thirteen years unless the Interior Department took over. Proponents of the Gossett amendment compared the "Ickes broadcast" to the methods of the radio actor, Orson Welles, who aroused hysteria in the East in the fall of 1938 by a radio dramatization of a fictional invasion of New Jersey by creatures from the planet Mars.

THE inquiry by the Federal Communications Commission into interstate rates of the Pacific Telephone & Telegraph Company was adjourned early this month until April 1st. The company asked for a 60-day adjournment in order to prepare highly technical charts, statistics, and graphs needed for presentation of its case.

The testimony covered by the case to date dealt with complex and technical methods of cost accounting, allocation of company costs, stock and bond issues, routing of calls, and relations between the PT&T and affiliated systems.

The FCC has contended that the interstate tolls of the telephone company should be reduced to conform to tolls charged in other parts of the country. Company attorneys have argued that vastly different conditions, such as higher cost of building and maintaining equipment, lower centers of population, and differences in traffic, justify a difference in tolls for the coast states.

* * * *

ACTUAL interference with rural telephone service resulting from REA co-op activity was noted in scattered developments recently. In Pennsylvania, the Monterey Telephone Company was apparently the first rural telephone company to throw up the sponge and ask the Pennsylvania commission for the right to abandon service rather than rehabilitate its service in the rural areas surrounding Kittanning, Pa. The cost of metallizing the company's "grounded" system (which is now worthless as the result of rural co-op construction) would have to be borne entirely by the telephone company.

In Harrison county, Ind., the Eureka Telephone Company asked the state commission for authority to issue $30,000 in first mortgage bonds for the purpose of making improvements in its system, which had been greatly damaged by interference from rural electric lines. The Southwestern States Telephone Company and the Southwestern Telephone Company have endeavored to meet the problem of improving rural service by an unusual rate plan.

The companies have asked the Arkansas commission for approval of rate schedules which would vary according to the number of telephone subscribers on each line.

The two telephone companies last mentioned are operated by the same management and serve several small Arkansas towns. The companies proposed to "furnish unlimited flat-rate service" to Ward, Lonoke county; Roe, Monroe county; and Slovac, Arkansas county; and the areas within a 5-mile radius of each town.

The areas would be serviced by dial-type telephones attached to automatic switchboards in the three towns, making employment of operators unnecessary. The companies would build lines out from each town but subscribers would have to build their own lines to connect with the company's line. Wall-type instruments would be provided.

The switchboards at Slovac and Roe would be connected with the Stuttgart exchange and the Ward switchboard with Cabot. The companies would reserve the right to limit the number of customers on a line to eight.

* * * *

RULES for television to allow limited commercial operation were adopted by the Federal Communications Commission on February 29th, to take effect September 1st. Advertising will be permitted in connection with programs for which the cost is borne by sponsors.

The rules which the commission adopted, however, assert that emphasis on the commercial aspects of the operation at the expense of program research is to be avoided. The channels already assigned to television would remain unchanged pending consideration of testimony at the commission's hearing on March 18th on aural broadcasting on frequencies above 25,000 kilocycles.

There will be two groups of stations. Class 1 stations continuing technical investigations may be allowed to use more than one channel. Others, designed to experiment in program production and technique, will operate in one channel only.

The commission suggested the marketing of receivers capable of being adjusted to receive any reasonable change in methods of synchronization or changes in number of frames or lines which may be found practical. Increased size of receiving-set screens, it held, was essential to widespread public acceptance of television, and continued experiments in the staging and studio aspects of television performances would also be necessary.

* * * *

LONG-distance telephone rate reductions, reflecting a saving to the public of nearly $5,500,000 a year, will become effective not later than May 1st by arrangement with the American Telephone and Telegraph Company, it was reported on March 15th by the FCC. The commission stated:

> As a result of conferences and negotiations which it initiated with the American Telephone and Telegraph Company, long-distance rates are cut to benefit the public by almost half a million dollars a month.

It commended "the forward-looking policy" pursued by the company in "acceding informally to its request for immediate and material rate reductions without the necessity of long-drawn-out proceedings." The cuts will apply to calls beginning with air line mileages of 420 miles and increasing proportionately through the mileage covered by the schedule, which is 3,000 miles, so that the maximum reductions will be on transcontinental calls.

* * * *

RADIO and aviation joined on March 6th to take a television audience on a 45-minute sight-seeing tour of New York. With kaleidoscopic effect, soon after the twin-motored flying laboratory with a tele-eye took off from LaGuardia field, the panorama of the metropolitan district began to unreel through the air.

It was the first "show" of its kind, and, mindful of the military value of such bird's-eye-view equipment, as well as the entertainment possibilities, Army and Navy officials watched with keen interest at Radio City and at other outposts. The demonstration was conducted by the National Broadcasting Company in coöperation with the United Air Lines, which provided the Boeing transport as the flying laboratory.

The telecasts were made from an average altitude of 2,000 feet. The World's Fair grounds were first to pop into view, as Announcer Ray Forrest, serving as barker of the airplane "rubberneck" tour, pointed out the sights. Motor traffic was easily discernible with automobiles rushing along like tiny ants as the plane swung over Manhattan to glimpse the New Jersey shore, Central Park, Times Square, Wall Street, and the bay, where the Statue of Liberty hove into sight. The skyline of lower Manhattan was one of the clearest scenes as the sun came out, adding brilliance to the pictures.

It was the sighting of such objects so clearly that caused spectators, among them radio engineers and military observers, to envisage the possibilities of adapting such a tele-airplane to use in wartime, especially for reconnaissance flights, bombing operations, and map making. It was remarked that with such "eyes" it would be easy for a bomber pilot to spot his target and survey the extent of the damage, while the scene, as telecast from the plane, would be seen far behind the lines.

One engineer predicted the use of robot, electrically controlled bombers that could be directed from the ground with each shot accurately judged, although the plane would be manless.

* * * *

JUST as in the case of the FCC's recommendation for a merger of domestic telephone companies, the commission's proposal to combine international cable and commercial radio services was subject to labor opposition. The principal attack was directed at the commission's report on the subject of employment of aliens in communications services. On this point the FCC's language was not restricted to international cable or commercial radio service, but stated: "While it may not be desirable for many reasons to impose a specific requirement that no alien be retained in the employ of any American communication carrier, legis-

lation should provide that the employment of additional aliens, or the retention of alien employees be permitted only by specific authority of this commission."

Early this month at a Washington conference of the American Committee for the Protection of Foreign Born, Daniel Driesen, an official of the American Communications Association, attacked the FCC for its alleged trend towards "chauvinism" at the expense of the employment opportunities of a few foreign-born workers engaged in communications services.

Mr. Driesen said that the proportion of aliens employed in such service was probably less than in almost any other American industry. He added that the FCC has shown no concern about the problems of national defense "except when it enables the communication companies to deprive workers of jobs." Unemployment in the communication field through lay-offs, according to this speaker, would jeopardize national defense as well as public safety by reducing the amount of radio communication facilities available between ships at sea and shore points.

After his speech, Mr. Driesen presented a resolution condemning the FCC recommendation that it be given authority to pass upon foreign-born workers in the communication industry. The resolution was passed by the Washington conference of the American Committee for the Protection of Foreign Born on grounds that the FCC proposal would discriminate against alien employees.

Incidentally, Mervyn Rathborne, president of the American Communications Association (affiliated with the CIO), also attacked the FCC on the basis of its recent telegraph, cable, and radio merger report. Rathborne stated that the FCC ignores the "security of labor" and exhibits a desire to gain control over labor standards, "thereby substituting bureaucracy for collective bargaining."

* * * *

On March 1st, Commissioner Paul A. Walker of the FCC gave an historical address on the progress and regulation of communication industries before the Commonwealth Club of San Francisco. Commissioner Walker was on the West coast at that time in connection with hearings into the interstate toll structure of the Pacific Telephone & Telegraph Company.

He reviewed the growth of all forms of modern communications, beginning with the telegraph system, which he said "has played a most important part in our national life." He noted the financial and economic problems of the telegraph companies which resulted in the recent FCC recommendations for merger and highspotted the more spectacular developments in radio-telegraph operations since 1914, when the Honolulu-San Francisco service was opened, which marked the beginning of radio-cable rivalry.

He discussed the functions of the FCC with respect to radio regulation and the problems which have arisen therefrom, such as the flurry over threatened censorship and the Mae West and Orson Welles incidents. On the subject of television, Commissioner Walker stated his belief that this art is still in an experimental stage and that with all due respect to the remarkable technical progress to date, improved television standards can be expected in the near future. He mentioned coaxial cables, now operated or in the process of construction between New York and Washington, and in the Chicago area, as part of the potential television picture.

The telephone also was depicted by Commissioner Walker as having seemingly "limitless" possibilities for development and improvement in speed, capacity, and in distribution cost for services performed. He even suggested that telephone-television was already within the realm of possibility.

Of the FCC telephone investigation, in which he played a leading part, Commissioner Walker said that the probe had directly or indirectly resulted in great rate reductions and had brought into existence a great amount of data that will be exceedingly useful in practical telephone regulation.

# Financial News and Comment

By OWEN ELY

## *New Financing Retarded by "Show Cause" Orders*

WHILE the SEC's "show cause" integration program has been known for some time, the actual issuance of the orders has had an unfavorable effect on some holding company securities, and—together with the agitation over competitive bidding—has created a rather discouraging background for utility financing. With the backlog of registered issues now almost cleared up, the only sizable item awaiting SEC release is the Jersey Central Power & Light $42,225,000 financing. Smaller issues on file with the SEC are $9,650,000 New England Power first mortgage bonds due 1969 (for which competitive bidding is proposed); $5,000,000 West Penn Power first 3s of 1970, and 24,923 shares of 4½ per cent preferred stock; and $5,000,000 Central Electric & Telephone first mortgage bonds due 1965.

The Jersey Central issue has been held up for several months, owing to technicalities, before the SEC; New England Power has apparently deferred competitive bidding on its issue for six months or more; and the West Penn Power issues, which involve $7,500,000 "new money" borrowing, seem to be encountering a little difficulty with SEC regulations. The principal problem in obtaining a clearance for the latter issue is whether the application should have been filed under § 7 instead of § 6, which is less stringent. Counsel for the commission has argued that a utility operating company, when it is also a holding company, should not be allowed to file under § 6B, but the commission has not yet given its final decision. The point is of interest because it may affect future financing of a number of other utilities which come under both classifications.

Indianapolis Power & Light has registered 715,980 shares of common stock, of which 645,980 shares are to be sold by the trustee for Utilities Power & Light Corporation and the remaining 70,000 shares by the company itself. The company also proposes to sell about $250,000 preferred stock privately.

Other current developments include the following:

Toledo Edison plans to file with the SEC $3,000,000 first 3¼s due 1970 and $7,250,000 debenture 3½s due 1960, and has applied to the Ohio commission for approval. Philadelphia Electric Company has deferred its $15,000,000 private financing program due to SEC criticism of the company's depreciation allowance, which is well below the average for the industry. Brooklyn Borough Gas Company is planning a $4,255,000 refunding program, through private financing.

Niagara Hudson has a large refunding program in view, following a merger of some of its properties. New Jersey Power & Light is also working on a general refinancing plan.

## *Electric Bond and Share Company*

THE total value of Electric Bond and Share's investments, based on recent market prices (the value of a few items being estimated), indicates the following "break-up" values for the preferred and common stocks:

| | *Approx. Estimated Value* | *Recent Price About* |
|---|---|---|
| Preferred ..... | 152 | 65 |
| Common ..... | 14 | 6 |

The company is in very liquid position, debts as of December 31, 1939, amounting to only $3,536,690, compared with the book value of assets amounting to approximately $557,000,000. Based on our analysis of the current liquidating value of the portfolio and the loans to subsidiaries, the total market value of assets amounts to about $221,200,000, as detailed in the accompanying table.

The company's assets may be tabulated as follows:

| | *Estimated Value (Millions)* | *% of Total About* |
|---|---|---|
| Cash, etc. ..... | 19.1 | 8.6% |
| Loans to subsidiaries | 68.3 | 31.0 |
| Bonds ..... | 46.1 | 20.8 |
| Stocks, etc. ..... | 87.7 | 39.6 |
| | 221.2 | 100.0% |

A FURTHER classification, showing the character of the investment in each subsidiary, is shown below.

In the table on page 417 showing the complete list of investments, it will be noted that $20,000,000 Cuban Electric 6/48 have been valued at 50. The company, which is a subsidiary of American & Foreign Power, has not published a report since 1931. In 1933 the Cuban government arbitrarily decreed a substantial reduction in all electric lighting rates throughout Cuba. The properties were then taken over by the government, but were returned about a month later. The interest rate on the $81,343,100 debenture 6s of 1948, of which $20,000,000 is owned by Electric Bond and Share, and the balance by American & Foreign Power and one of its subsidiaries, was reduced to 4½ per cent in 1937. In view of the lack of information regarding earnings, an arbitrary value of 50 was assigned to the bonds.

The American & Foreign Power is given an estimated value of 100 per cent because it is believed that with any substantial improvement in South American exchange rates, the company should be able over a period of years to retire the debt.

The loan to United Gas and the system bonds are carried at full value because the system covered its fixed charges 2.24 times in 1938, while coverage in the two previous years (before proration reduced oil income) was over 3½ times.

Unfortunately, Electric Bond and Share does not publish a detailed income account. However, combining the available figures for 1939 obtainable from several sections of the annual report, we obtain the following results, which are stated in millions of dollars:

| | *1939* | *1938* |
|---|---|---|
| Interest ..... | $7.5 | $7.5 |
| Dividends ..... | 3.9 | 3.7 |
| Miscellaneous ..... | .1 | ... |
| Gross Income ..... | 11.5 | 11.2 |
| Expenses ..... | .3 | .3 |
| Taxes ..... | 1.5 | 1.5 |
| Net Income ..... | 9.7 | 9.4 |

INVESTMENTS (AT ESTIMATED CURRENT VALUES) IN SUBSIDIARIES, ETC.
(MILLIONS OF DOLLARS)

| | *Cash* | *Loans* | *Bonds* | *Stocks** | *Total* | *Per Cent* |
|---|---|---|---|---|---|---|
| Amer. & Foreign Power ..... | .... | 39.4 | 10.0 | 16.0 | 65.4 | 29.6% |
| Amer. Gas & Electric ..... | .... | .... | .... | 28.8 | 28.8 | 13.0 |
| Amer. Power & Light ..... | .... | .... | 4.8 | 5.6 | 10.4 | 4.7 |
| Elec. P. & Lt.—United Gas ..... | .... | 28.9 | 25.8 | 13.6 | 68.3 | 31.1 |
| National Power & Light ..... | .... | .... | .... | 19.4 | 19.4 | 8.4 |
| Misc. investments ..... | .... | .... | 5.5 | 4.3 | 9.8 | 4.5 |
| Net current assets ..... | 19.1 | .... | .... | .... | 19.1 | 8.7 |
| Totals ..... | 19.1 | 68.3 | 46.1 | 87.7 | 221.2 | 100.0% |

*Includes warrants.

ESTIMATED VALUE OF ELECTRIC BOND AND SHARE INVESTMENTS

| | *Approx. Market Price** | *Est. Value (Millions of Dollars)* | *Group Totals* |
|---|---|---|---|
| *Bonds* | | | |
| $ 800,000 Nor. Texas Util. 1st 6/40 | 100 Est. | $ .8 | |
| 25,000,000 United Gas Pub. Ser. 6/53 | 100 Est. | 25.0 | |
| 4,800,000 Texas P. & L. 1st 4¾/65 | 100 Est. | 4.8 | |
| 20,000,000 Cuban Elec. 6/48 | 50 Est. | 10.0 | |
| ..... Miscellaneous bonds | ..... | 5.5** | $46.1 |
| *Notes and Loans Receivable* | | | |
| $39,400,000 Amer. & For. Power | 100 Est. | 39.4 | |
| 28,900,000 United Gas Co. | 100 Est. | 28.9 | 68.3 |
| *Net Current Assets*—Dec. 31, 1939 | ..... | 19.1 | 19.1 |
| *Stocks and Warrants* | | | |
| ..... Stock of wholly owned sub. | ..... | 2.6† | 2.6† |
| 65,809 shs. Amer. & For. Pr. $6 Pfd. | 19 | 1.3 | |
| 13,800 shs. Amer. & For. Pr. $7 Pfd. | 23 | .3 | |
| 2,158,236 shs. Amer. & For. Pr. $7 2nd Pfd. | 5 | 10.8 | |
| 881,500 shs. Amer. & For. Pr. Common | 1⅝ | 1.4 | |
| 5,812,884 shs. Amer. & For. Pr. Warrants | ⅜ | 2.2 | 16.0 |
| 846,985 shs. Amer. Gas & Elec. Common | 34 | 28.8 | 28.8 |
| 51,840 shs. Amer. Pwr. & Lt. $5 Pfd. | 44½ | 2.3 | |
| 937,221 shs. Amer. Pwr. & Lt. Common | 3½ | 3.3 | 5.6 |
| 485 shs. Elec. Power & Lt. $7 Pfd. | 28¼ | .... | |
| 13,905 shs. Elec. Power & Lt. 2nd $7 Pfd. | 13 | .2 | |
| 1,976,638 shs. Elec. Power & Lt. Common | 5⅛ | 10.0 | |
| 393,408 shs. Elec. Power & Lt. Warrants | 2 | .7 | 10.9 |
| 17,310 shs. United Gas Corp. $7 Pfd. | 99 | 1.7 | |
| 752,666 shs. United Gas Corp. Common | 1⅜ | 1.0 | |
| 151,005 shs. United Gas Corp. Warrants | ¼ | .... | 2.7 |
| 2,540,450 shs. National P. & L. Common | 7⅝ | 19.4 | 19.4 |
| 1,624,700 shs. Commonwealth & Sou. Common | 1 | 1.6 | |
| 1,145,551 shs. Commonwealth & Sou. Warrants | ⅛ | .1 | 1.7 |
| 21,000 shs. Niagara Hudson Power Warrants | ⅛ | .... | |
| 30,000 shs. United Corp. Warrants | ¼ | .... | |
| Total | | $221.2 | $221.2 |

*Where no price is available, an estimate based on the company's earnings record, etc., is used.
**Market value as of December 31, 1939 (annual report).
†Ledger value, item not described, but presumably refers to Ebasco Services, Inc.

| | | |
|---|---|---|
| Preferred Dividends .... | 8.4 | 8.4 |
| Balance for common stock ..... | 1.3 | 1.0 |

The amount earned on the $6 preferred stock in 1939 was about $6.94 per share. (There are 1,155,655 shares of $6 preferred and 300,000 shares of $5 preferred outstanding.) The balance available for common stock was 24 cents a share on the outstanding 5,267,147 shares.

ELECTRIC Bond and Share received approximately $1,570,000 dividends from American Gas and Electric last

year, about $207,000 from American Power & Light preferred, $136,000 from United Gas preferred, and $1,520,000 from National Power & Light common stock. The remaining dividend income, approximately $527,000, was apparently obtained from Ebasco Services, Inc. One of the policies of the SEC has been the gradual reduction of the service organizations of the big utility systems to a "mutualized" or nonprofit basis. It is probable, therefore, that Electric Bond and Share has had to reduce its income substantially from this source. The 1939 report mentions that the increase in dividends of $293,833 was due to larger amounts received from American Gas and Electric, American Power & Light preferred, and United Gas preferred, which more than offset lower income from Ebasco.

The company may benefit substantially at some time in the future by recovery of back dividends on American & Foreign Power preferred, American Power & Light preferred, Electric Power & Light second preferred, and United Gas preferred. For the present, while earnings do not provide any substantial excess coverage for preferred dividends, the facts that (1) interest income covers nearly 90 per cent of the preferred dividend requirements, and (2) that cash assets, after deducting all debts, amount to over two years' dividend requirements, would seem to provide a considerable element of strength for the preferred stock, currently selling to yield about 9¼ per cent.

The common stock, currently selling at only about 3 per cent of the 1929 high of 189 seems a little undervalued as compared with some other investment trust issues, and also its tremendous leverage possibilities would seem to go far toward offsetting any future difficulties due to changes entailed by § 11. If the SEC permits Mr. Groesbeck to carry out his plan to keep these changes "within the family," they should not entail any necessary hardship.

ELECTRIC Bond and Share, in its unusually long 1939 report to stockholders, supplied a large amount of information which should be of interest not only to its own security holders, but to utility investors in general.

The report, in seeking to dispel any erroneous ideas which may still prevail regarding the company's origin and function, points out that it was organized in 1905 by General Electric Company to salvage small local electric situations where credit for machinery and supplies had been furnished to concerns in areas not financially self-sufficient. The company continued to build up the lighting and power business in these particular sections by providing equity or "risk" capital. It remained under the control of General Electric until 1925, when the stock was distributed to the latter's stockholders; and today the largest of some 109,000 stockholders of Electric Bond and Share owns less than one per cent of the stock. These facts explain many system characteristics, including the fact that Electric Bond and Share has always provided supervisory and technical, as well as financial, aid to subsidiaries, under the guidance of officers who were trained and experienced utility men.

"Integration," through interconnection of properties and extension of service to thousands of small communities, has always been a policy of Electric Bond and Share Company, which pioneered in this development of the industry. During thirty-five years, the average residential rate charged by its operating subsidiaries has steadily declined from 14 cents per kilowatt hour to 3.8 cents in 1940, which is well below the national average.

POSSIBLY as an offset to the stress recently placed by the SEC on the advantages of local financing and management for operating companies, the report pointed out that 65 per cent of the bonds of its supervised companies were held in the four most populous states (New York, Pennsylvania, Massachusetts, and Illinois), while 60 per cent of the direct obligations of the United States government are similarly held in these states. Investors in 39 states hold

only 25 per cent of the EB&S system bonds, and the same states hold only 20 per cent of the government's bonds. In other words, both the utility system and the government find it necessary to draw capital from the larger and wealthier states in order to take care of development work in the more remote and less populous districts of other states.

The report pointed out that of its portfolio some $467,000,000, or about 90 per cent, represents actual cash cost to the company, while the remaining $61,000,000 securities were acquired for other considerations of value.

Regarding the general problem of integration, the report points out that only about one-half the electrical industry is affected by the act,

> . . . the differentiation being made, not upon the basis of whether there is holding company control, as such, but rather upon the basis of whether the business is interstate in character and so subject to Federal authority. . . . It is difficult to imagine that under present conditions any of these intrastate holding company systems will voluntarily subject themselves to the act by undertaking or permitting the integration of their systems with interstate systems through interconnection or otherwise. Serious economic consequences to the nation may result if the act should prove to be a deterrent rather than an aid in that physical integration which offers the best means of improving the character and reliability of electric service and of reducing its cost to the public.

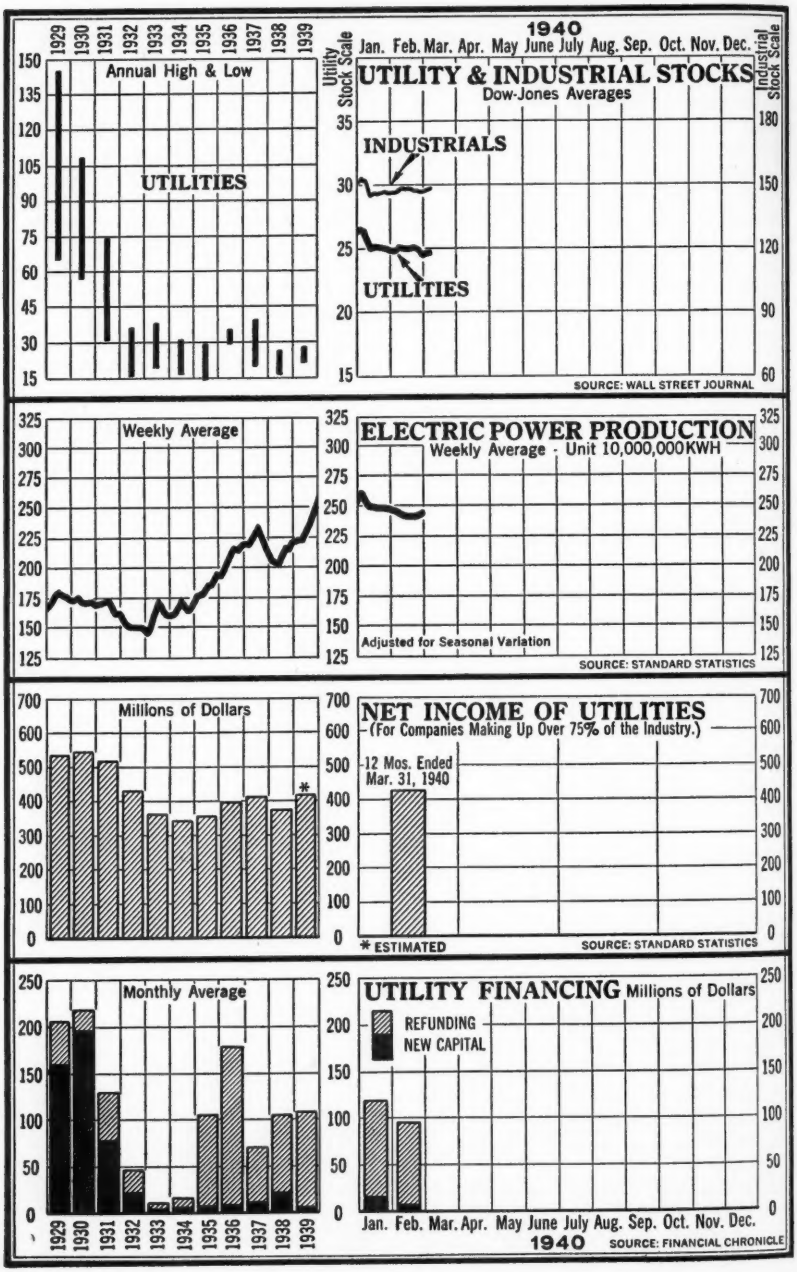
## *"Liquidating Value" of Holding Company Securities*

THE recent declines in certain holding company securities, which accompanied the "show cause" orders issued by the SEC under § 11 of the Utility Act, combined with the already prevailing low levels for utility security prices, have resulted in ridiculously low quotations for some of these securities if the companies are considered as investment trusts rather than utility holding companies.

Most holding company securities are apparently appraised marketwise, largely on the basis of fears regarding possible penalties, orders, or embargoes which might be imposed by the SEC in connection with the "upstream flow" of net earnings, as well as the potential divorcement of properties to meet geographic integration. Actual equities and claims on earning power are, therefore, in many cases being largely ignored. On the other hand many junior securities which have little or no apparent equity in system values continue to sell at levels which seem unwarranted by their status in the equity picture.

It is, of course, a difficult job to assign values to many of the securities held in the treasuries of the top building companies where there is no established market. It is necessary in each case to analyze the share earnings and apply an arbitrary multiplier. It is necessary to add the amount of advances to the subsidiaries and the net quick assets; then, after deducting any senior securities at par or redemption value, to apply the net balance for the issue in which we are interested. Due to the factor of capital leverage, changes in the multipliers used, or in the periods for which share earnings are taken, would naturally lead to fairly wide variations in the estimates of "liquidating values." With these reservations the following estimates, compared with recent market prices, are presented:

| | *Liquidating Estimated Value* | *Market Price About* |
|---|---|---|
| Amer. Pr. & Lt. $6 Pfd. .. | 58 | 53 |
| Amer. Pr. & Lt. $5 Com... | 58 | 44 |
| Amer. Pr. & Lt. Com. .... | 0 | 3½ |
| Elec. Pr. & Lt. 1st $7 Pfd.. | 78 | 29 |
| Elec. Pr. & Lt. 1st $6 Pfd.. | 78 | 24 |
| Elec. Pr. & Lt. 2nd Pfd.... | 0 | 13 |
| Elec. Pr. & Lt. Com..... | 0 | 5½ |
| Natl. Pr. & Lt. Pfd..... | 360 | 90 |
| Natl. Pr. & Lt. Com..... | 14 | 7½ |
| Eng. Pub. Serv. $6 Pfd.... | 152 | 87 |
| Eng. Pub. Serv. Com..... | 11 | 9 |
| United Gas Improve..... | 14 | 12 |
| Com. & So. Corp. $6 Pfd. | 119 | 63 |
| Com. & So. Corp. Com.... | 1 | 1 |
| Stand. Gas & Elec. Bonds.. | 168 | 61 |
| Std. Gas & Elec. 1st $7 Pfd. | 72 | 14 |
| Std. Gas & Elec. 2nd $4 Pfd. | 0 | 4 |
| Std. Gas & Elec. Com..... | 0 | 1½ |
| North Amer. Co. $3 Pfd... | 157 | 56 |
| North Amer. Co. Com. .... | 30 | 21 |
| United Power & Lt. 6/75.. | 157 | 82 |
| United Power & Lt. Pfd... | 36 | 35 |
| United Power & Lt. Com. | 0 | ¾ |


Annual High & Low
UTILITIES
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939
150 135 120 105 90 75 60 45 30 15
1940
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
Utility Stock Scale
Industrial Stock Scale
UTILITY & INDUSTRIAL STOCKS
Dow-Jones Averages
INDUSTRIALS
UTILITIES
35 30 25 20 15
180 150 120 90 60
SOURCE: WALL STREET JOURNAL
Weekly Average
325 300 275 250 225 200 175 150 125
ELECTRIC POWER PRODUCTION
Weekly Average - Unit 10,000,000 KWH
Adjusted for Seasonal Variation
SOURCE: STANDARD STATISTICS
Millions of Dollars
700 600 500 400 300 200 100 0
*
NET INCOME OF UTILITIES
(For Companies Making Up Over 75% of the Industry.)
12 Mos. Ended Mar. 31, 1940
* ESTIMATED
SOURCE: STANDARD STATISTICS
Monthly Average
250 200 150 100 50 0
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939
UTILITY FINANCING Millions of Dollars
REFUNDING
NEW CAPITAL
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
1940
SOURCE: FINANCIAL CHRONICLE

# What Others Think

## Would the Supreme Court OK Federal Steam-power Operations?

PERUSAL of the 1,913 printed pages of hearings held by the House Appropriations Subcommittee on the so-called independent offices appropriation bill, 1941, is hardly recommended reading for a spring cruise. To be plain, it is difficult and confusing text.

Nevertheless, these occasions—that is, hearings before a committee of Congress—sometimes shed light upon the policies or objectives of governmental agencies or their responsible officials. A case in point (having only an indirect bearing upon appropriations) relates to the constitutional right of the United States government, through such an agency as the Tennessee Valley Authority, to engage in the production of electric power by constructing and operating steam plants. The Supreme Court has more or less definitely sustained the generation of electricity by the government as an incident to flood control and navigation, as well as national defense. But these objectives connote hydroelectric plants, and the prevailing belief has been that the government was estopped from steam-plant generation.

This belief led Representative Everett M. Dirksen of Illinois, a member of the House subcommittee considering the appropriation bill, to open the subject when W. C. Fitts, Jr., TVA's general counsel, was on the witness stand. Mr. Fitts thereupon indulged in a session of prophecy and predicted that if the question of steam generation should be attacked in a proper case, the right of the TVA to engage in such operations would be sustained.

THE following colloquy between Mr. Dirksen and Mr. Fitts sets forth the latter's views on the matter:

MR. DIRKSEN. One of the intriguing situations here is that the whole power program is justified, constitutionally at least, as an incident to flood control and navigation. Right or wrong?

MR. FITTS. Right. We could amplify that, but that is good enough, I think.

MR. DIRKSEN. All right, if that is right, then I am wondering about our venture into the manufacture of power by steam plants, which is not an incident to flood control or navigation even for temporary periods.

MR. FITTS. It is this: First, the statute that we are dealing with, I think, must be my primary guide, because the Congress did pass that statute, clearly authorizing the generation of power by steam.

I think that, so far as my duty is concerned, as legal adviser to the authority, it is my duty to assume that the statute, which the Congress passed, is constitutional. I do not think I can make the assumption that it is not. That is my primary point.

Now, might I come to the second point, of whether or not, if it is attacked in a proper case, it would be sustained. Of course, you realize that that is a prediction. I want to say frankly that the exact question that you raised has never been passed on by the courts, one way or another.

I think that the constitutionality could be sustained on this basis: That the primary program here, as set forth in the statute and as being administered, is a program for unified development and control of the Tennessee river; that the dams that are being constructed substantially serve two constitutional functions of the Federal government—one, the improvement of navigation; two, the control of floods; and I think we might add the third proposition of national defense.

I think we could prove that these three Federal constitutional functions are being substantially served by these dams.

Now, as an incident, or as an inevitable result, or whatever you want to call it, to the construction of these dams, there is created, simply by the impounding of water in back of these dams, water power.

In the Ashwander Case, the Supreme Court said that that water power being the property of the United States, the United States can take the necessary steps to make that property marketable and to make it more valuable. This was directly in issue in that case, they held that the government

can adopt reasonable means to make that power more marketable and more valuable; and, in doing so, may put in generating equipment and transform the raw water power into electrical energy. The court further held that having changed it from raw water power into electrical energy, the government can construct or acquire transmission lines to carry the power to the market.

Now, I say that that line of reasoning can be carried one step farther, and it is only one step that is required, and that is that, to make that raw water power, which is available behind these dams, the secondary and dump power we are talking about, more valuable and more marketable, the government, if it can put in generating plants at a cost of millions of dollars and change that raw water power into electrical energy, it can also operate steam plants in order to change what is secondary and dump power into primary power, and thereby increase the value of the property which the government has.

That is my idea.

MR. DIRKSEN. Of course, I say that no effort was ever made to justify the production of energy down there, except as an introduction of flood control and navigation, and while it may be argued that steam plants are necessary, we have not reached the point where the question has been raised. I do not know whether I get your idea of the matter, but of course it is an easy matter for the court to determine. But if we assume an extreme case, for instance, where for three or four months of the year you have to depend, to a considerable extent, on steam plants, in order to get out the necessary electrical energy to the customer, that will raise a very interesting question, as I see it.

MR. FITTS. Well, now, I can give you another example that I think is very interesting. In the trial of the Eighteen Power Company Case, the last of the constitutional cases, before the 3-judge court at Chattanooga, I think you will find in the opinion of the court, written by Judge Florence Allen—the opinion of the three judges in that case—that one ground that they took for sustaining the validity of the construction and operation of these tributary projects, for instance, was that even if those dams did not substantially serve navigation and flood control, which they held they did—but even if they did not, they could be justified on the ground that, by building those dams and storing the water and releasing it, we thereby, increased the value of the government property at the Wilson dam and made it more valuable and more useful to the government, because we turned what was secondary power into primary power.

Now, similarly, in the same way, by the operation of steam plants, we turn this secondary power created by these dams into firm power and make it more valuable and more useful to the government.

That would be my argument.

THERE is the possibility of carrying further this argument that fuel-generated power operations of the Federal government are justified as a supplement to incidental hydroelectric operations by the government; since hydro operations are themselves ostensibly a by-product or incident of navigation, flood control, etc., supplementary steam generation thereby becomes an incident to an incident, so to speak. Could it be argued from that point that the Federal government, having once developed a market for all of its power production (both fuel and hydro), could thereafter construct additional facilities to protect or expand that market, thereby adding a third "incidental" step?

—G. E. D.

## Advances in Rural Electrification Claimed by REA

FARM power systems financed by REA are making a "favorable showing" financially and the ultimate losses on loans "should be small," the administrator of rural electrification, Harry Slattery, stated in his annual report to the Congress on February 17th.

The report traced in outline the swift growth in the use of electricity in the United States, and the progress of the coöperative and other farmers' power systems financed by REA during their present development period. It pointed out that sharp reductions in over-all construction costs, such as REA has already achieved in its four and a half years of operation, have operated to keep at a minimum the interest and amortization

charges. The report said in addition:

> No less important to the continuing and increasing success of self-liquidating rural power systems is the abundant, and, to the user, profitable use of electric energy. An analysis of the growth of use and several related facts in the history of the electric supply industry, together with figures on the extent of use on REA-financed systems now in service, encourages the belief that, with possible exceptions here and there, rural electric systems in the areas in which their development has been or is about to be undertaken will pay their own way.

Some of the earlier established financed systems show up so well in point of revenues that 11 borrowers have made or arranged to make payments of principal and interest, aggregating $79,594.70, in advance, according to the report. Some other borrowers, less favorably situated, were unable to maintain the payment schedule, with the result that 27 instalments of principal and interest remained unpaid on June 30, 1939, and were thereby defaulted. Defaulted payments totaled $65,716.30.

Borrowers were granted extensions of time to meet the payments, and there was no impairment of assets and no disclosure of operating conditions which could not be remedied, according to the report. The extensions of time were granted in accordance with § 12 of the Rural Electrification Act, which authorizes the administrator to extend the time of payment of principal or interest of loans for power systems for a period not in excess of five years.

The payments allowed to become past due were in situations where the old 20-year payment plan was in effect with its accelerated scale of payment. As was pointed out in the annual report for 1938, on the more recent loans the 25-year period of repayment authorized by the statute has been substituted for the 20-year period.

Regarding the defaulted payments, the report added:

> In many instances the difficulty lay in the fact that circumstances beyond the control of the borrower, such as injunctions by private interests, had delayed construction or energization and the inflow of operating revenue. Some of the systems affected have since shown an accelerated growth.

Out of approximately $267,000,000 allotted by REA through November, 1939, there had been actually paid out to borrowers at that time approximately $176,000,000. (The payments are made after materials are furnished and construction and other work is performed.) With the greater number of systems not yet due for amortization payments, and many new systems not yet required to pay interest, collections from borrowers through November aggregated approximately $3,300,000.

A considerable number of the REA-financed systems are in economically favorable areas, hitherto left unserved "less because the utilities were reluctant to build than because panic and depression left them without capital to finance extensions even though the impairment of their revenues was relatively slight," said Mr. Slattery's report. It noted:

> No further proof is required of the bright prospects of the REA systems serving these areas than the repeated unsuccessful attempts the utilities have since made to buy them out.

As to areas recognized as "thin," the report said:

> Here pay-out unquestionably will be difficult, but it does not appear unattainable. In general, pay-out prospects in these less favorable areas are being improved by the addition of new consumers and increased usage on the one hand, and by steadily reduced costs as well as more efficient operation on the other hand.
>
> Inevitably the soundness of the loans in the "thinner" areas will depend in part upon the economic condition of the American farmer during the next twenty-five years. On the assumption that American agriculture will maintain itself at a level of decent living, the ultimate losses on REA loans should be small.

In transmitting the report, Administrator Slattery accepted for himself and his associates, as the next goal, 30 per cent rural electrification. This goal was suggested by the Secretary of Agriculture, Henry A. Wallace. The present electrification is approximately 25 per cent, or 1,700,000 farms. This compares

with 744,000 just before the establishment of REA in 1935.

Mr. Wallace's suggestion was made to the REA officials and staff not long after REA became an administration within the Department of Agriculture, under the terms of the President's Reorganization Plan No. II, on July 1, 1939. Mr. Wallace's "fullest coöperation and support" in this new relationship was acknowledged by Mr. Slattery. His report pointed out too that other agencies of the Department of Agriculture have coöperated generously in the work of REA, noting that "one of the first manifestations of this coöperation was a marshaling of the forces of the extension service to aid the rural power systems in enlarging their memberships and increasing the usefulness of electric service, an effort which promises to benefit the systems materially."

Administrator Slattery's report gave the following thumb-nail sketch of REA activity during the recent peak operations and in the period 1935-39:

> The Rural Electrification Administration has met its severest test and made its greatest achievement during the fiscal year that closed on June 30, 1939, and in the few months since. Previously REA was geared to a $40,000,000-a-year program. For the fiscal year 1939, the program was abruptly increased to $140,000,000. Of this total, $134,000,000 was allotted and most of the electric lines it made possible have actually gone into operation.
>
> Today, nearly 200,000 miles of REA-financed lines are serving more than 400,000 farm families and other rural users. In addition, 80,000 miles of lines for which funds have been set aside are either under construction or being surveyed and planned. When the 260,000 miles of line in 45 states, and 36 generating plants, for which REA has thus far allotted funds, are in full operation, they will make electric service available to above 750,000 users who had little hope of it before the Federal government entered the rural electrification field.
>
> During the four and a half years since the Executive Order of May 11, 1935, established REA, electricity has shown its worth as a tool for bettering the social and economic position of the American farmer. More farms have been connected to electric distribution lines during this brief period than during the preceding half century or more since the birth of the electric power industry. In response to the demand created by the coming of service to hundreds of thousands of farms of all types and in all parts of the country in the last few years, there has been an unprecedented development of productive uses for electric energy on the farm and in the farm home.

TELLING of the changes wrought by electricity in farm and community life, the report said in part:

> Productiveness of the farm plant and comfort of the farm home go hand in hand. The new electric service has provided the only means by which thousands of farm homes can equal urban homes in comfort and convenience. Often the saving or profit from a farm use, such as brooding, poultry-house lighting, milk cooling, or feed grinding, enables a farm family to acquire such appliances as a refrigerator, washing machine, hand iron, or even range, that means so much to the farm homemaker.
>
> In the rural communities too there have been changes. Street lights and motion picture houses have appeared in villages and hamlets hitherto denied them. Schools, churches, and meeting halls have acquired new facilities and conveniences and taken on new usefulness as community centers.
>
> Small community industrial plants have been started or revived. Typical are saw mills, grist mills, flour mills, cold-storage locker plants, and cotton gins. Artificial daylight lamps operated by electricity from REA-financed lines have come into use for the grading of tobacco. On the northern neck of Virginia, a coöperative power system has provided energy to operate a sweet potato curing and storage plant.
>
> New developments and new economies in engineering and construction have reduced the cost of electric systems and widened the feasible service areas. Average line costs have been reduced to less than $750 a mile, compared with the $1,500 to $2,000 per mile cost common among the utilities a few years ago, and with an REA average of approximately $1,000 a mile at the start of the program in 1935. In exceptionally favorable areas, lines have been built for as little as $430 a mile.
>
> Development of a new-low-cost limited service, through simplification of equipment and installation, and radical reduction of prices, has brought REA system service within reach of tens of thousands of tenants and other farmers in the low-income group.
>
> Self-help projects, in which farmers help to build their own lines and use the wages they earn to pay for wiring their homes and installing simple appliances, have made service possible in some areas where income is small and service on a pay-out basis otherwise impracticable.
>
> Meanwhile the states have become increasingly hospitable to rural electrification


*Los Angeles Times*

THE STATUS QUO

and have taken steps to foster its development. New Hampshire opened its doors to rural electric coöperatives by amending its Agricultural Marketing Act to permit them to operate. Almost at once an REA-financed coöperative was set up in that state, following the establishment of two in Vermont.

THE report noted that state legislatures in Alabama, Florida, Missouri, Montana, New Mexico, Oklahoma, South Carolina, and Tennessee had enacted laws based upon the model Rural Electric Coöperative Act drafted in 1939. It also told of an increasing disposition to hold the coöperatives and power districts exempt from what was termed inappropriate and burdensome regulation by the utility commissions. Some progress was reported in adjusting state and local taxes to a reasonable basis. Regarding coöperatives, the report summarized:

Socially and economically the coöperative continued to color the entire Federal rural electrification program. At the close of the 1939 fiscal year nearly 9 out of 10 of REA's borrowers were coöperatives. Increasingly the coöperative members were reading their own meters, making out their own bills, sharing in the tasks of management, and learning to run their own collective affairs. What had been often called at first "government lines" or "REA lines" came increasingly to be known as "our lines."

One section of the report details the progress of rural electrification state by state.

From a critical standpoint, it seems regrettable that this REA report is so combative in its references to electrification by private utilities. To the reader without background, the presentation is less than frank on this score. The fact that private industry is still responsible for the vast bulk of rural electrification is effectively obscured.

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# A Digest of Recent State Laws Affecting Public Utilities

WHILE there are several commercial services which furnish information as to state regulatory laws, and while a number of states make available from time to time their revised regulatory laws affecting utilities in pamphlet form, students of this subject have long felt the need of some handy digest compilation that would bring together different enactments between the two covers of the same publication.

This has been particularly true during the last three or four years when so many legislative innovations have been of vital interest to public utilities and those whose duty it is to regulate them. Furthermore, the area of interest has spread beyond the conventional service which covers purely regulatory matters and (with the rise of municipal ownership subsidy by the Federal government, rural electrification, and Federal works projects) has seeped into adjourning areas of municipal corporation law, corporation law, constitutional law, and tax law. This situation naturally requires additional research effort to reunite the different pieces of the jig-saw so as to make clear a general picture of public utility law.

In a small but adequate pamphlet recently released by the Government Printing Office, the staff of the Library of Congress has done this tedious chore. The work offers a digest of all statutory changes and new laws enacted on the subject of transportation and public utilities from 1935 to 1938, inclusive. Inasmuch as this covers the first, as well as the last important biennials of the state legislatures under the New Deal, this inexpensive little book becomes a veritable "must" addition to the library of anyone seriously interested in the trend of utility law and utility regulation. (Only a handful of state legislatures met last year in regular or special session.)

THE references are so brief that in most cases the law is described in a single sentence. But, by the same token, this very thumb-nail sketch treatment enables the researcher to cover much ground in an astonishingly short time. If additional information is wanted on any particular law, the reference citation to state statutory reports is available in every instance.

The volume is divided into four chapters: Administration, Operating Privileges, Operation, and Public Ownership —Co-ops. Under these general chapter headings are more detailed subtitles. Thus, under Chapter II—Operating Privileges—occur such headings as Franchises and Certificates, Registration and Licensing, and so forth. Under the subtitles the law is classified according to the types of utilities: Electricity, gas, telephone, carriers, etc.

It is notable in passing that, during the period covered (in Chapter IV on Pub-

lic Ownership, probably the most valuable in the light of recent developments), revenue bond laws were enacted under the influence of Federal subsidy for the financing of local publicly owned utility projects in the following states: Alabama, Florida, Georgia, Kentucky, Nebraska, New Hampshire, New York, North Carolina, Pennsylvania, South Dakota, Tennessee, and Vermont. These laws vary, to some extent, as to type of utilities authorized. But for the most part they were enacted in response to a series of model drafts (so-called "Ickes bills") sent out by the Public Works Administration to the various legislatures in 1934.

Also, during this period nonprofit rural electrification coöperatives were authorized in Alabama, Arkansas, Georgia, Indiana, Mississippi, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, and Virginia. Under a Wisconsin law of 1937, rural electrification coöperatives are not included as public utilities.

RECENT STATE LAWS ON TRANSPORTATION AND PUBLIC UTILITIES. State Law Digest. Report No. 2. U. S. Government Printing Office. Washington, D. C. 1940.

## The Effect of Weak Local Government On Municipal Utility Service

MARQUIS W. Childs, whose celebrated book entitled "The Middle Way," shifted American attention to the apparently successful half-and-half socialism of the Scandinavian countries, is about the nearest type of writer we have nowadays to compare with the late Lincoln Steffens and certain other members of that gallant little band of journalistic reformers who went under the title of Muck Rakers in the days of Roosevelt the First.

Recently, Mr. Childs has been investigating the civic affairs of Philadelphia and what he has found there has not reflected credit upon the publicly operated utility service in the city of brotherly love. Writing a feature article under a Philadelphia date line (January 21st) in the Sunday supplement of the Washington, D. C., *Star*, Mr. Childs stated bluntly:

> In this community of 2,000,000 people the essential services—water, fire protection, and police—are on the point of breaking down. That is how far grafting misgovernment and public indifference have gone in what has been jeeringly called "the city of brotherly loot."
>
> It is no new development. For at least two decades, as the city debt mounted and the water system wore out, the crisis has been preparing. But not until water from the tap began to taste actually foul and doctors advised against drinking it, not until the danger of inadequate fire protection became really menacing, not until streets became almost empty of police, were Philadelphians forced to realize how serious the situation is.
>
> There exists today the possibility of major tragedy. With luck, it will not happen. With luck, Philadelphia will get a $60,000,000 loan from the Federal government to build a new water system. With luck, the new city income tax of 1½ per cent will provide enough funds to balance the budget. For a time at least, Philadelphia may get by.
>
> The decay that has eaten so deeply is not special to Philadelphia. It comes of a disease common to most American cities, a political disease having its origin deep in the American past. The causes, or perhaps they are merely symptoms, are the alliance of wealth with machine politics and the indifference of "right-thinking," "good" people.

The "good people" of Philadelphia, it appears, can afford to be more or less indifferent to the defects of public service in the city proper, because they, for the most part, live in the handsome new suburbs which ring the city—Radnor, Wynnewood, Bryn Mawr, Elkins Park, Germantown, Chestnut Hill. The resulting deterioration of residential property in the city has been one of Philadelphia's problems. Mr. Childs lays the blame on a continuation of city machine politics and general public indifference to the boss-ridden state of city affairs. In 1937

there was a careful investigation of the entire subject conducted under the auspices of the state attorney general at that time. Although many indictments were returned, prosecution has lagged.

CITY finances finally got into such a critical state that it was obliged to send a delegation to Washington to see Jesse Jones, head of the RFC, about obtaining some Federal assistance. Mr. Childs described this with the following statement:

> Mr. Jones finally agreed that the Reconstruction Finance Corporation would participate in a loan with Philadelphia bankers, taking half of about $41,000,000. But—said Jesse Jones—only on condition that the city pledge the revenue from the municipally owned gas works for a long period of years. As the taxi driver put it, "So they had to hock the gas works to get out of the red."
>
> In an effort to get down to fundamental reasons for this failure of municipal government, the inquirer comes back to the myriad troubles that plague virtually all great cities today. The migration to the suburbs has left blighted areas in which taxable values have shrunk virtually to nothing. In recent years Philadelphia's assessed valuation has gone from $3,500,000,000 to $2,500,000,000. This has meant, in accord with the provisions of the city charter, that the debt limitation has been lowered. It has compelled such measures as the income tax.

Geographical location, he went on to explain, plays a certain part in Philadelphia's difficulties. It is so close to New York that it is drained to some extent by the very proximity of that great financial center. Philadelphia is located on a river, rather than directly on the Atlantic coast. However, what is happening in Philadelphia could happen and has happened elsewhere. The moral which Mr. Childs points to, but does not express in so many words, is that when a municipal government goes to seed, it is its public service that pays the toll. In other words, the efficiency of those public utilities which remain under the operation of municipal government is likely, over the long range, to correspond with the caliber of the municipal government itself.

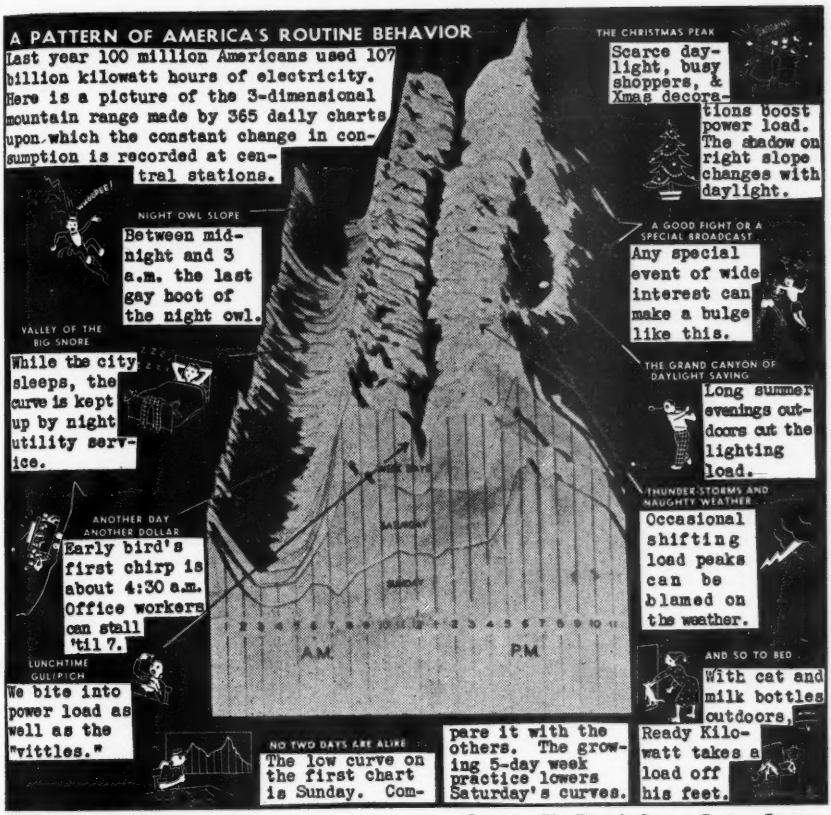
—F. X. W.

## The German Railway System As a Standard of Government Operation

HOW many of those who talk and write so often on the controversial subject of public ownership of public utilities would be able to answer this fairly elementary question: What is the biggest and most important system of utility enterprise conducted under government operation throughout the world? One might be tempted to say immediately, "Soviet Russia." There the government operates all forms of commercial life. But that is hardly a true test of "public ownership and operation" as we have come to mean the descriptive phrase. In Russia there is no distinction made between the powers of the government acting within its sphere of sovereignty, and government activity in the rôle of managing a commercial enterprise on a profit basis, if possible.

In any event, notwithstanding her vast expanse and population, the separate utility systems of Russia do not rank first in either size or commercial importance. The correct answer, according to Arthur W. MacMahon and W. R. Dittmar, writing in the *Political Science Quarterly* (December, 1939), is the German railway system. They say:

> . . . It has been and it remains the largest single public enterprise in the world [statistical footnote]. It gains significance, furthermore, from the fact that for several decades, before the War of 1914 and after, German practice in the use of semiautonomous administration was outstanding and the theoretical discussion of the problem was undoubtedly the richest in any country. There is additional interest in tracing the changes wrought under national Socialist rule, which raises the question of the rôle of semi-independent forms of organization when party competition is abolished and a concert of action imposed with almost military intensity. If this is considered the




*Revised from Exide News* *Courtesy, The Electric Storage Battery Company*

pathology of administration, be it remembered that clinical observation of the abnormal, with due allowance, may afford clues of general meaning.

The historical development of the German railway system falls naturally into three phases. The first was the period of control by the various German states prior to 1919. During this era railroads were privately built and managed under charters granted by separate states and as early as 1838 Prussia had developed a model regulatory law which reflected the demand for public control of such utility enterprise. During this period government ownership also flourished but was complicated by reason of the different states building their own systems without particular regard for each other.

A FEDERAL office was set up in 1873 to prepare for the unification of all systems—an ambitious plan attributed to Bismarck. He later gave impetus to government ownership which increased steadily until the eve of the War of 1914 witnessed only a fragment of German

The war strengthened the agitation for a single system and the Kaiser's army command favored a consolidated administration. Following the collapse of 1918 the Weimar Constitution ordained nationalization of all German railroads under the ownership of the railway operations remaining under private management.

Reich. When they became profitable after stabilization, the German railroad system was plunged into the reparations trouble of the German republic when the so-called Dawes plan attempted to use the German railroads as a device for collecting the Allied demands.

The subsequent period of inflation and economic collapse within Germany left the government railway system in a precarious condition. Some of the business men favored abandonment of government ownership altogether. Others suggested socialization to the extent of handing the roads over to the railroad workers.

The outcome was a compromise in which government ownership triumphed, but important steps were taken towards an autonomy in management quite unlike anything that had been previously tried along this line. It is this still fairly unique feature of the German railway operations to which Messrs. MacMahon and Dittmar direct most of their attention.

The original plan was, of course, complicated by the reparations feature so that the organization of the new railroad board set up by a statute in October, 1924, reflected international control as well as domestic management. Half of the eighteen members of the railroad board were appointed by the German government or chosen by domestic holders of securities issued by the railroad system. The other half was selected by trustees for the foreign reparations committee. This novel hybrid arrangement, so annoying to the German people, proved unsatisfactory and foreign participation was abandoned with the acceptance of the Young plan in 1929. With the liquidation of the Young plan, which resulted in the Hoover moratorium of 1931, the German railroads were finally left without further direct international financial obligations.

All of these complications, however, left in their wake a German railway system owned and operated by the central government through the agency of an autonomous corporation whose securities were held by the public. The rise of the national socialistic movement in Germany, however, brought the railroads under increasing domination of the central government. Certain decree laws of 1937 and 1939 placed the lines under a Minister of Transport, who was made a virtual dictator. Even so, the separate existence of the railway system as an economic entity continued to be recognized in a declaration that it constitutes "a separate property of the Reich." Legally this phrase means that the railroad system leads a juristic life of its own, has its own assets and liabilities, enters into contracts in its own name and for its own account. It can sue and be sued and is authorized to take up loans.

From an economic standpoint this separation of the German railways from the other assets of the government arose originally from the necessity of placing these vast undertakings on their own feet, self-reliant in regard to their credits with heightened responsibility, and able to act with alacrity in accommodating their operating policies to the economic situation.

The German railway system, as already intimated, is a tremendous economic enterprise. Prior to the recent outbreak of international hostilities, one German in twenty-five was working on the railroads, which had a total payroll of 800,000 workers. After some comment on the employee relationship on German railways, Messrs. MacMahon and Dittmar drew the following conclusions with respect to the organization features of the German railway system:

> . . . a word should be said regarding the place which the theory and practice of National Socialism hold for the autonomous administration of public enterprise. The régime, clearly, has had no wish to alienate its economic holdings; its protective nationalism, alone, would probably have precluded such a step even if its condition had not been that of a virtual state of war. It has been prepared to make proud parade of its railway system but likewise to subordinate it. But the impressive fact has been that even so monopolistic and jealous a régime has seen administrative reasons for the retention of autonomous forms and procedures.

# The March of Events

## FPC Cites Increased Activity

THE Federal Power Commission, in its nineteenth annual report issued on March 3rd, recorded a marked increase in its activities and an increasing burden of litigation to meet challenges to its jurisdiction.

In the fiscal year, 102 new applications for licenses of preliminary permits were received, making a total of 1,600 received in the nineteen years since the commission was created. Six of the applications were for preliminary permits with proposed installation of 809,187 horsepower, 14 were for licenses for major projects with a total proposed installation of 992,679 horsepower, and 14 were for minor projects. The 124 major licenses for power projects granted by the commission and now in force represent an installed capacity of 4,361,615 horsepower, a proposed ultimate capacity of 6,782,616.

The commission has pushed its work of determining the actual legitimate original cost of the many licensed hydroelectric plants, this information being important in relation to the rate base, amortization reserves, the expropriation of excessive profits, and the price to be paid by the U. S. government if it takes over any project after the expiration of its license.

Issuance of show cause orders to electric utilities and natural gas companies subject to the commission's jurisdiction under the Federal Power and Natural Gas acts has resulted in the last year in rate reductions. The commission prescribed a uniform accounting system for natural gas companies and made marked progress in the classification of property accounts of electric utilities on the basis of original cost.

In the last year, the FPC devoted its survey of national power requirements to estimating "the power requirements of the country in case of possible emergency and to determine the best methods of meeting such requirements."

## Power-reserve Bill Signed

LEGISLATION reserving to public use until January 1, 1942, half of the energy generated at the Bonneville project became a law on March 7th.

President Roosevelt signed the Pierce-McNary bill providing half the power supply must be reserved for publicly owned distribution systems, making the project a unit of the Interior Department and authorizing the employment of an assistant administrator, a chief engineer, and general counsel at $7,500 a year each.

## Property Sale Approved

THE Federal Power Commission recently announced that it had approved sale of approximately 24 per cent of the electric facilities of the West Coast Power Company, Portland, to the Bonneville Power Administration and to Public Utility District No. 1 of Wahkiakum county and Public Utility District No. 2 of Pacific county, Wash.

The commission found that the proposed sale, involving a portion of the power company's lower Columbia division in Washington and Oregon, would be consistent with the public interest. Application for this authority was made in a petition filed with the commission on February 9th.

Properties included in the authorized transfer comprise all of the company's facilities in Cowlitz, Wahkiakum, and Pacific counties, Wash., and a submarine cable in Clatsop county, Or. Consideration for the sale was $575,000, the commission said, and of this sum $120,000 would be paid by the Wahkiakum district; $300,000 by the Pacific district; and $155,000 by the Bonneville Administration.

# Arkansas

## Electric Rates Reduced

AN order reducing the electric rates charged by the Arkansas-Missouri Power Corporation in northeast Arkansas was issued by the state utilities commission on March 5th. The company agreed to reductions in 36 communities, totaling about $40,000 a year, effective March 1st.

Earlier conferences brought cuts in rates by the Arkansas Power & Light Company, Oklahoma Gas & Electric Company, Arkansas Utili-

ties Company, Citizens Electric Company, and others.

Towns served in Arkansas by the Arkansas-Missouri Power Corporation include Blytheville, Hoxie, Walnut Ridge, Pocahontas, Powhatan, Hardy, and Mammoth Spring.

An average reduction of 7.7 per cent in electric rates for more than 60 western Arkansas cities and towns served by the Southwestern Gas & Electric Company was announced on March 7th by the state commission.

Residential rates were reduced 8.1 per cent and commercial rates 6.1 per cent. The commission estimated the savings to customers would be $55,239 annually.

The Southwestern Company serves communities along the western border of the state from Texarkana to Rogers. The company's present annual revenue of $713,885 in Arkansas would be lowered to $658,646, based on 1939 consumption. The percentage of reduction ranged from 3.3 in Texarkana to 19.3 in rural areas.

### Adopts Block Rate

THE Augusta city council recently changed the rate schedule of the municipal light plant from a fixed to a sliding scale, effective April 1st. The present rate of 8 cents per kilowatt hour for lights, 4 cents for motors, and 3 cents for cooking will be changed to a sliding scale of 8 cents per kilowatt hour for the first 15 used; 6 cents for the next 35; 5 cents for the next 50; 3 cents for the next 100; and 2½ cents above 200.

All bills are subject to a 10 per cent discount if paid by the first of the month. The industrial rate will be a straight 3 cents per kilowatt hour.

## California

### Hetchy Water Pact Signed

AGREEMENT between the public utilities commission of San Francisco and the Modesto and Turlock irrigation districts that there will be no water litigation between them for the next fifteen years put a victorious climax on an 8-year campaign to insure San Francisco's water supply.

The memorandum signed by engineers for the parties to the agreement was approved by resolution by the utilities commission on March 4th, following the unanimous approval of it by the two irrigation districts' boards of directors. The act was regarded by Utilities Manager Cahill as the most significant and far-reaching in Hetch Hetchy history so far as protection of the city's water supplies is concerned.

Although neither of the irrigation districts has been in important litigation with the city during the 8-year period, they, as owners of first rights, might well have gone to the courts and defeated San Francisco, which has only third rights. By taking advantage of permissive clauses of the Raker Act, the districts might well have caused the utilities commission unending trouble, forcing the city to spill water it can now conserve behind the heightened Hetch Hetchy dam.

### Ickes Quizzed

THE California Water Authority recently asked Secretary Ickes to outline the Federal government's plans for operation of the multimillion dollar Central Valley project.

In its first meeting since defeat of a $50,000,000 revenue bond bill by the state legislature, the authority requested information on the amount of electricity to be generated at Shasta dam, the price and territory to be served.

It passed a second resolution asking the Department of Interior to draft a contract with the state determining the policies in the distribution of future water and power from the Federal project.

A clash between Frank W. Clark, authority chairman and public works director, and Senator Bradford S. Crittenden, Stockton, one of the original sponsors of the Central Valley Project Act, marked the meeting. Crittenden appeared to explain his opposition to state development of public utility districts to distribute Shasta power as proposed in the defeated legislation.

Before launching a power distribution program, the San Joaquin senator argued, the state should first determine how much water can be made available for power usage.

## Colorado

### Utilities Lose Move

ANOTHER step forward in the long legal battle to obtain lower gas rates for Denver was taken early this month when the U. S. Circuit Court of Appeals ruled that an order of the Federal Power Commission, calling for an investigation of the companies which bring natural gas to Denver, was not reviewable at this time.

The court sustained a motion of the FPC to dismiss a petition, asking for a review, filed by the Canadian River Gas Company and the Colorado Interstate Gas Company. It was learned recently that even though the legal question concerning the FPC's inquiry has been pending nearly a year, the investigation is nearly completed.

Judge Orie L. Phillips, in his written opinion, traced the background of the current gas rate investigation. The court cited the fact that the Canadian River Gas Company owns and operates the gas pipe line which gathers natural gas near Amarillo, Tex.; transports this gas to a point near Clayton, N. M., where it transfers it to the Colorado Interstate Gas Company. The Colorado Company carries the gas from Clayton to a point near Littleton, Colo., where it sells it to the Public Service Company of Colorado at a rate fixed by contract. The Public Service Company brings the gas into Denver and distributes it to the local gas consumers. Another pipe line, owned and operated by the Colorado-Wyoming Gas Company, runs from Littleton to Cheyenne, Wyo., to furnish gas for that city.

In July, 1938, the FPC, acting under the Natural Gas Act passed by Congress, issued an order requiring information concerning corporate structure and rates from both the Canadian River and Colorado Interstate companies. The information was furnished under protest and with the reservation that the companies were not yielding their right to challenge the Federal Power Commission's jurisdiction.

# Florida

## Reduction Proposal Rejected

BECAUSE such a move would be untimely and might tend to jeopardize negotiations for the purchase of the water distribution system, the Miami city commission by a 3-to-2 vote late last month turned down a proposal by Commissioner R. C. Gardner looking to further reduction of Miami electric rates by the Florida Power & Light Company.

Gardner's resolution would have authorized a survey of rates, which he claims should be reduced by 33⅓ per cent to save $1,000,000 a year. He was supported by Commissioner Fred W. Hosea, but Mayor E. G. Sewell and Commissioners Alexander Orr, Jr., and C. D. Van Orsdel voted it down as inappropriate at this time.

The commission "received and filed" a report from the Florida Power & Light Company, showing 1.21 per cent earned return on its gas franchise.

# Illinois

## Needs Rate Increase

ADDRESSING the annual stockholders' meeting of Peoples Gas Light & Coke Company recently, George A. Ranney, chairman, remarked that the matter of gravest concern to him is the inadequacy of the company's earnings derived from its public utility activities.

"My intimate knowledge of the general details of business convinces me that nothing can adequately cure this situation except an increase in our rates," he stated.

Earlier he had pointed out that the major part of the company's consolidated net earnings was being derived from interest and dividends on its investment in Natural Gas Pipeline Company of America, earnings from its by-products corporation, and from its office building.

During January the company's volume of gas send-out increased about 25 per cent over 1939, he said, and sales to domestic consumers were also substantially greater during that month.

# Kentucky

## Power Purchase Bill Defeated

REPRESENTATIVE Henry Ward charged the state public service commission this month with being the "baby" of private utility interests as the state house defeated, 53 to 27, his bill to permit cities to contract for TVA power. The bill was one of two pending in the legislature to permit Louisville to acquire the Louisville Gas & Electric Company. The Paducah Democrat declared the commission was created "because the private utilities wanted it" and that its members were opposed "fundamentally" to municipal ownership.

Ward's bill would allow any city in the state to issue revenue bonds, upon approval of the

citizens in a referendum, to buy or build revenue-producing public works. It meets a TVA requirement by specifying that the cities owning such works make payments to governmental units in lieu of taxes, but no more than a private utility would pay.

As drawn by Ward, the bill would prevent the state commission from having jurisdiction over such municipalities in the management, rates, or fees of the public works, but would give jurisdiction to the state commission of rates charged customers not residents of the city.

Governor Keen Johnson was noncommittal on March 7th on the "demand" of Mayor Joseph D. Scholtz that he approve a bill authorizing Louisville to buy the local utility. If the bill does not pass, the mayor said, "the state administration has sold the city down the river."

The state senate concurred on March 5th in minor house amendments to a bill to subject to a fine of $50 to $500 and a year's imprisonment anyone "tapping" telegraph or telephone wires or reading without consent anything sent by wire or cables.

# Massachusetts

## Gas Rates Cut

REDUCTION in the rates of gas sold by the Old Colony Gas Company, announced recently, provides that users of gas in quantities from 2,000 to 10,000 cubic feet per month will save 20 cents per thousand cubic feet, and 10 cents per thousand on gas used from 10,000 up to 100,000 a month.

The reduced rates will be effective as of May 1st in the eight towns served by the company—Braintree, Weymouth, Hingham, Hull, Cohasset, Abington, Rockland, and Whitman.

# Mississippi

## Senate Passes Utility Bill

THE state senate passed a bill on March 1st giving municipalities and counties legal means to determine rates for water, gas, and electricity. The measure permits municipal boards of aldermen and county supervisors to determine rates which utilities may charge after having conducted a public hearing.

This is substantially the same as a bill by Senator James C. Rice of Natchez, which the senate passed on February 23rd, but recalled February 26th and returned to the municipalities committee. Dr. Rice charged his original bill was being obstructed through the power of a utilities lobby, and that such activities had been killing utility bills with regularity.

Senator Albert Lake of Greenville, committee chairman, made denial, asserting it was the unanimous opinion of the committee that the rate-fixing power should be limited to municipalities—as in the existing statute—since county boards of supervisors "have neither the training, the money, nor the time to sit as rate-fixing bodies."

Senate members on March 4th voted 13 to 10 against recalling the bill from the house, after Senator Rush Knox of Houston, who voted for the bill on March 1st, made a motion to reconsider the vote.

# Missouri

## Laclede Drops Tax Suit

AN injunction suit in U. S. District Court, in which the Laclede Gas Light Company attacked validity of an occupational tax of 5 per cent of gross receipts, was recently dismissed, in accordance with a stipulation signed by Robert W. Otto as counsel for the gas company and Associate City Counselor Harold Hanke. The suit also was for a declaratory judgment interpreting the ordinance.

The tax ordinance in question, which levied the tax on the privilege of using the street, was superseded in May, 1938, by an ordinance levying a like tax as a license fee, and the company has been paying the tax under this ordinance. The ordinance levying the occupational tax was approved March 20, 1936. The tax liability of Laclede Gas under this ordinance was about $350,000 a year, or about $700,000 for the two years preceding enactment of the substitute ordinance.

In a proposed compromise with the city on pending rate and valuation cases, the gas company offered in 1938 to pay the tax claim under the 1936 ordinance. The compromise, however, was disapproved by the commission and no provision was made for payment of the tax.

The stipulation for dismissal of the injunction suit made no mention of the future status of the city's tax claim. The company still disputes the legality of the tax.

## Gas Contract Rejected

A NEW contract proposed early in February by the Mississippi River Fuel Corporation for supplying natural gas to Laclede Gas Light Company was rejected, the Laclede Company announced recently, because according to the company's analysis it would increase the cost of gas about $36,125 a year.

The Laclede Company, President L. W. Childress said, would file an intervening petition in a proceeding pending before the Federal Power Commission for investigation of the reasonableness of the rates paid by the Mississippi River Fuel Corporation for gas at the wells in Louisiana and the prices charged for gas delivered to Laclede by pipe line.

Childress said natural gas purchased by Laclede in 1939 cost $1,417,812, and that the same amount at the new rates proposed by Mississippi River Fuel Corporation would have cost $1,453,938.

The proposed new rates were intended to apply on condition Laclede used approximately double the amount of gas now purchased for mixing with manufactured gas. In addition to natural gas for this purpose, Laclede also buys it to resell without mixing to industries and to its affiliate, Laclede Power & Light Company.

The new proposal included a flat rate of 27 cents a thousand cubic feet for natural gas for mixing in place of the present sliding schedule of rates based on various use and load factors. It proposed a rate of 23 cents instead of 25.6 for natural gas to be sold on a "firm" basis to industries.

For natural gas to be sold to industries under special contracts with interruptible service, the pipe-line company proposed a price equal to 80 per cent of the gross rates collected from consumers. For gas to be used by Laclede Power & Light in the generation of electricity, the proposed rate was 12.65 cents.

# Nebraska

## District Power Ready

LOUP River Public Power District officials recently announced the district would be ready to deliver hydro-generated electricity to the Nebraska Power Company at Omaha about April 15th.

Directors extended time of completion of the Omaha substation from February 15th to April 11th because of inability of manufacturers to deliver a huge switchboard, because of war orders.

The district and the power company not long ago ended a "feud" by signing a long-term contract for sale of the electricity.

## York to Appeal Franchise Case

THE York city council recently authorized City Attorney Calvin Webster to appeal the city's power case to the United States Supreme Court.

The U. S. Circuit Court of Appeals at St. Louis last month upheld the Federal court at Lincoln in its finding that the Iowa-Nebraska Light & Power Company has a perpetual franchise in York. The city authorized a $475,000 bond issue two years ago for construction of a municipal electric power plant or distribution system. The power company sued for an injunction restraining issuance of the bonds.

The city then started ouster proceedings against the company, on the grounds its franchise had expired three years previously and that the company was operating by sufferance. Federal Judge Munger ruled the franchise was perpetual, which the circuit court upheld.

## Districts Show Loss

THREE public power districts, the Middle Loup of Arcadia, the Howard county of St. Paul, and the Southern Nebraska of Minden, all showed deficits for 1939 operations according to audits filed recently with the state irrigation bureau.

The Middle Loup was $28,677 in the red and among its liabilities listed $36,108 as accrued interest on its bonds. The district has $654,000 in bonds outstanding. The district had water sales in amount of $13,030, which is its only source of revenue. Administration expense was $9,219 and field expense was $15,048, which with bond interest made total expenditures of $41,708. The audit made no deduction for depreciation.

The Howard county district had operating income of $12,269, of which $11,343 was from sale of power to farm users. Operating expenses were $10,680, of which $2,335 was for power purchases. Gross income was $1,896 but with $9,555 as interest on its debt this left a deficit of $8,058. The district listed assets of $418,633, of which $350,293 is invested in its electric plant. It also listed accrued interest on its bonds of $18,853.

The Southern Nebraska had operating income of $25,709, of which $23,426 was from sale of power to farms, $771 to other utilities, and $969 from commercial power sales. Operating expenses were $19,471, of which $5,837 was for power purchased. Net operating revenue was $6,238 and gross income was $6,823. Interest on its debt was $10,622, which left a deficit of $3,799.

# New York

## St. Lawrence Plan Condemned

CHARGING that the St. Lawrence seaway would destroy the barge canal and be detrimental to New York business, foes of the proposed waterway called on the state legislature recently to join in the fight against the project.

Eighty representatives of shipping interests, industry, farm organizations, and railroad employees, meeting under the auspices of the State Waterways Association, adopted a resolution asking the legislature to adopt a resolution by Senator Mahoney, Republican, and Assemblyman Carney, Democrat, both of Buffalo, urging Congress to defer action on the treaty pending a complete investigation. The resolution asserted:

"The St. Lawrence seaway and power project threatens the economic security of labor, transportation, and industry both in the United States and in the Dominion of Canada. The tremendous cost of the project would in no way be justified on the part of either the United States or Canada at this time even if there were any economic soundness in the scheme. An alliance with Canada, a belligerent country, in this period of war would not be in accordance with the spirit of neutrality which the United States must maintain."

The meeting also adopted a resolution urging Congress to approve a resolution by Representative J. Francis Harter, Republican of Erie, providing for an exhaustive and comprehensive hearing on the seaway project before any further steps were taken. Representative Harter appeared at the meeting and spoke in support of his proposal. He said ratification of the seaway treaty at this time would mean an "overt help of the United States for Great Britain and the Allies and would be so interpreted by their enemies."

## Revises Depreciation Policies

TO expedite the proceedings in which it is involved with the state public service commission, the Brooklyn Union Gas Company has taken two major steps in the handling of its depreciation policies to bring them in line with the requirements of the uniform system of accounts promulgated by the state agency. These developments were disclosed by Clifford E. Paige, president of the company, in his annual report which was sent to stockholders early this month.

As one step the company increased its accruals for depreciation and this resulted in a charge against earnings of $1,772,349, compared with $1,145,208 in the previous year. Per share earnings thus were brought down to $2.42, contrasted with better than $3 for the twelve months ended September 30, 1939. Despite the higher depreciation accruals, however, they were moderately above a year ago when $2.25 was reported.

In another step the company increased its reserves for depreciation on its balance sheet to $13,644,211 from $7,270,299. This was done by a charge to earned surplus which reduced that sum at the end of the year to $2,345,512 from more than $9,800,000.

## Seek to End Power Body

LEGISLATION to abolish the state power authority was introduced on March 8th after a move of western New York legislators failed to shut off its funds.

Assemblyman Harold Ehrlich, Buffalo, and Senator William Bewley, Niagara, Republicans, sponsored the measure. They also led the fight against more funds for the authority, which was termed a "propagandizing" agency supporting a "new Passamaquoddy"—the proposed St. Lawrence seaway.

The western legislators sought to eliminate an $80,000 item for the commission which was created in 1931 to study power resources of the St. Lawrence. Northern New York representatives defended the activities of the authority and leaders of both parties urged that the $80,000 item be retained.

## Utility Bill Hit

AN "intolerable burden" would be placed on public utilities if the Andrews bill regulating employment in such industries were enacted by the state legislature, it was asserted in a report made public recently by the chamber of commerce of the state of New York. The report, which was sponsored by the special committee on industrial problems, described the measure as "vicious legislation" which would curb reëmployment. The chamber of commerce report said:

"This bill would require every public utility corporation to file with the labor commissioner a statement of the number of its employees in each class of employment and of its procedure in selecting or promoting such employees. The commissioner, with this information, can then issue regulations to the corporation setting forth the procedure to be followed in the appointment of employees.

"Among other things, the corporation is to be required by law to give public notice of its 'willingness' to receive application for employment; to supply forms of application; maintain proper records of all applications; appraise or rate 'on a coöperative basis' the qualifications of each applicant; establish lists of eligible applicants, and select employees to fill a vacancy as it occurs from the applicant whose name appears first on the list.

"In compiling this list, race, color, or creed of the applicant must be disregarded. In fact,

it appears as if all this additional burden is imposed on public utilities in order to prevent the possibility of preference being given to an employee by reasons of race, color, or creed."

# Ohio

## Gas Rate Ordinance Fought

SUIT seeking to enjoin the city of Zanesville from enforcing gas rate legislation enacted by the city council March 11, 1938, which reduced previously existing schedules 50 per cent for the first 500 cubic feet consumed, and asking that the company not be required to furnish heat for two municipal buildings free of charge as provided by the ordinance, was filed in Federal court late last month by the Ohio Fuel Gas Company.

In its petition, the gas company alleged that the Zanesville city council drew up the new rate schedule after the lapse of a previous 5-year contract established between the company and the city in 1933, and that the prices fixed by the council would not allow the company to make a fair profit.

Until 1938 Zanesville consumers were charged $1 for the first 500 cubic feet of gas used, and 45 cents for each thousand cubic feet thereafter. The new legislation provided a charge of 50 cents for the first 500 cubic feet and a similar amount for each thousand cubic feet thereafter.

# Oklahoma

## Utility Sets Limit

R. K. LANE, president of the Public Service Company, recently stated he was willing to recommend sale to the Grand River Dam Authority of the company's Vinita and Pryor district facilities "if the utilities are able to purchase power from GRDA at a cost not in excess of the present production costs of the utilities."

"Thus far," said Lane, "the price offered for sale of energy by GRDA to the utilities would increase the energy costs of the utilities in the neighborhood of $300,000 a year over a 10-year period."

Lane pointed out the company's board of directors might not approve his recommendation, which "did not constitute an agreement to sell."

## Governor Renews Warning

AN ultimatum to the War Department to stop construction of the Denison dam over the Red river with the threat that the state will halt it on Oklahoma land until a court decision is given on constitutionality of the project, was forwarded to Secretary of War Woodring early this month. Phillips said:

"If the secretary doesn't heed the letter, I will protect the rights of the state. We can bar the highways to prevent material reaching the dam or stop it in other ways by use of police, the courts, and everything. I do not need the national guard."

The governor's demand came after an oil strike in the basin of the proposed Denison dam.

The governor, however, declared martial law on March 13th on the $20,000,000 Grand River dam and hydroelectric project, but work was permitted to continue. Major Harry Paris and two aides entered the office of I. N. Towne, superintendent of construction, and placed the area under martial law.

As another phase of his campaign to force the GRDA and the Public Works Administration to pay the state $850,000 for roads and bridges that would be inundated, Governor Phillips ordered Attorney General Mac Q. Williamson to seek a Federal or state injunction to block completion of the project.

# Oregon

## Rate Cut Defended

L. T. MERWIN, president of the Northwestern Electric Company of Portland, declared recently that adjustments in the company's new residential electric rates would result in savings to residential customers of Northwestern and Portland General Electric of $820,000. The total annual savings, he predicted, would reach $1,750,000 when new schedules for commercial service are filed.

Portland residential rates will be lower than those of either Seattle or Los Angeles, where municipal plants are operated, he said.

Merwin's statement followed the recent declaration by the Bonneville-For-Portland Committee that the new rates were not acceptable to the committee.

# Pennsylvania

## PUC Chairman Named

GOVERNOR James on March 6th appointed John Siggins, Jr., Warren county attorney, to the $10,500-a-year job as chairman of the state public utility commission. Siggins, who served in the 1938 primary campaign as James' manager in Warren county, was the governor's first appointee to the commission. He has served as a member for approximately a year.

He succeeded Denis J. Driscoll, of Elk county, who resigned on March 5th to become a trustee in reorganization of the Associated Gas & Electric. The resignation gave James the chance to gain control over the 5-man regulatory commission, where two holdover Democratic appointees remain, Richard J. Beamish, of Scranton, and Thomas C. Buchanan, of Beaver. The other Republican member is R. W. Thorne, of Williamsport.

The governor said "it may be weeks or months before the vacancy can be filled."

## Gas Company Appeals

THE Peoples Natural Gas Company on February 29th carried its fight for rate increases to the state superior court with an appeal from a split decision of the state public utility commission. The PUC on March 13th asked the court to set aside the appeal.

The PUC order denying the increase disregarded evidence submitted in hearings, invaded constitutional rights, and the laws governing the commission administration itself, counsel for the company charged.

Increases ranging between 2 cents and $1.27 to consumers who use 15,000 cubic feet of gas or less a month were proposed by the company. It was estimated that the higher charges would bring about $1,263,000 more revenue annually.

The company also asked the court for an order of supersedeas, which if granted would mean that the new rate schedule would become effective immediately, pending final disposition. The FPC recently ordered an investigation of the company.

## Electric Rate Slashes

RATE reductions totaling $1,724,000 a year will be shared by 350,000 customers of the Duquesne Light Company. The reduction, the largest ever shared by customers of the company, and one of the largest utility rate cuts ever put into effect in the state, was announced early this month following conferences between company officials and the state public utility commission. The new rates become effective as soon as the utility files its revised schedule of tariffs with the commission.

The settlement, it was announced, would terminate the rate inquiry initiated by the commission in 1937, shortly after the state legislature set up the new rate-making body. Previously, under this inquiry, the PUC had ordered the company to make a temporary cut of $1,250,000—the fall of 1937. Since then numerous conferences had been held looking to a final agreement on rates without the long-drawn-out procedure of a complete rate and valuation investigation.

The bulk of the cut will be split among the company's residential consumers.

The state commission has also announced that a new and simplified tariff, which will save customers approximately $14,150 a year, was filed on March 7th by the Bradford Electric Company. The new rates are to be effective for all billings resulting from meter readings after March 31st. The utility operates in Potter and McKean counties.

## Asserts Jurisdiction

IN a formal order on March 8th the state public utility commission announced it has jurisdiction to continue its investigation of the Pennsylvania Utility Consumers Service, Inc., of Harrisburg, as well as of John J. Lipko, president.

The order also stated its intention to announce its findings to the public and to certify the findings to any public officer whose duty it may be under the law to act upon them. The commission held that § 1013 of the Public Utility Law "vests a general power in the commission to conduct hearings other than those specifically provided by the Public Utility Law, and we are of opinion that this general power may be exercised to inquire into the activities of any person or corporation which appear calculated to cheat the consumers of public utilities of full benefit of the reparation provisions of the Public Utility Law, entrusted to the commission for administration."

The order stated that the Pennsylvania Utility Consumers Service, Inc., is chartered for the stated purpose of "aiding consumers in securing reductions in public utility rates and refunds from public utility companies."

The corporation under Lipko's direction, the commission said, has entered into agreements with numerous consumers in the Pennsylvania Power & Light Company's territory "whereby, in consideration of the agreement of the corporation to use its best efforts to secure reduction of utility rates," the consumer retains the corporation to represent him, and further agrees to pay the corporation an amount equal to 2 per cent of his annual electric bill and, in addition, to pay the corporation 20 per cent of any overpayments or refunds secured by the corporation or received by the consumer from the utility.

# South Carolina

## Santee-Cooper Probe Asked

GOVERNOR Burnet R. Maybank asked the state legislature on March 7th to make a "thorough and impartial" investigation of the Santee-Cooper power project after charges were made of "waste, mismanagement, and incompetence" in its construction. House Speaker Sol Blatt introduced such a bill on March 12th.

The Santee-Cooper project is the largest such project in the nation now being financed by funds of the WPA.

The governor's action followed receipt of a letter from J. L. M. Irby, who was dismissed recently as chief of the project's land acquisition department. Mr. Irby asked for an investigation to place responsibility for "incompetence, mismanagement, and waste of public funds, and to rectify conditions before the handling of this project becomes a scandal and a stench."

The project involves construction of a power dam at Pinopolis, S. C., reclamation of several thousand acres of land for farming, and making a navigable channel from Charleston to Columbia.

# Tennessee

## TVA Has No Tax Say

THE Tennessee Valley Authority has nothing at all to do with deciding how much taxes Nashville Electric Service shall pay to the city, City Attorney W. C. Cherry said on March 1st.

Mayor Thomas L. Cummings, who had previously stated that "in my opinion this is a matter to be determined between the board [the Nashville Power Board] and the Tennessee Valley Authority," refused to amplify his statement or to make any comment.

Cherry stated that the contracts of sale between Nashville, TVA, and the Tennessee Electric Power Company, and the legislative act that authorized the sale were perfectly plain about the rate of tax to be paid by NES to the city and he could see no occasion for argument.

The city attorney said that the contract clearly stated that NES shall pay taxes on the property it operates at the same rate as any other city taxpayer. "At my insistence it was written into the contract that taxes would be paid at the prevailing city tax rate on the amount of the initial purchase price, plus improvements with proper deductions for depreciation."

James A. Newman, counsel for the Nashville Power Board, was said to be drafting a written opinion at the request of Chairman W. C. Baird. The opinion will interpret for the board the tax regulations included in the contract and in the act.

Cherry said that he could see no possible reason for referring the matter to the TVA, that so far as he could see they had nothing to do with it. He said that the original letter which he addressed to the mayor, the power board, and the city tax assessor, asking that the tax question be worked out and setting out the way in which the contract specified that the tax should be paid, was dictated in the presence of Newman and with his approval.

## Claim Delays Trade

A. T. Drinnon, counsel for Al Kraemer of Knoxville, conditional purchaser of the Tennessee Electric Power Company's street railway properties in Nashville, said recently he had been informed by Mayor Thomas L. Cummings and the city board of public works that they would approve no purchase of the TEPCO holdings until the city's claim for street damages and repair had been settled.

Kraemer, operator of a bus system in Knoxville, is head of the Nashville Transit Lines, formed after he and his associates reached an agreement some weeks ago to buy the TEPCO properties. The Nashville Transit Lines is one of the several bidders for a bus franchise.

Cummings has contended that TEPCO has a $700,000 obligation to the city for failure to repair streets. Drinnon said that "We are not in a position to make any offer of that kind," adding that TEPCO's estimate of the work was $400,000.

It was reported recently that Kraemer may intervene in the suit pending against TEPCO before the state railroad and public utilities commission demanding that TEPCO be required to completely modernize its transportation equipment.

George Armistead, local counsel for Kraemer, on March 1st filed an answer on the part of the Nashville Transit Lines to the city's suit against TEPCO asking appointment of a receiver for the company and settlement of street damages claimed by the city. A blanket denial of all charges made in the city's suit was made in a demurrer filed by the utility in chancery court on February 29th.

Chancery Court Judge R. B. C. Howell on March 5th refused to grant the city's request to appoint a receiver for TEPCO, but allowed the city to bring the case to trial with a renewal of its petition for a receivership, forfeiture of franchise, and claim of damages, when court reconvenes in April.

# Texas

## Old Utility Group Back

THE Dallas city council recently reduced its often discussed utility committee from five back to the three original members, thereby apparently settling an old feud that had developed between R. D. Suddarth and Ben Cabell on the governing body.

Mayor pro tem. Cabell, Councilmen Hal Noble and W. B. Johnson were renamed on the committee by council action but M. M. Straus and E. J. Ward Gannon, added to it several weeks ago at Mr. Cabell's suggestion, were dropped after the voting was over.

Mr. Suddarth opposed a standing utility committee of three members when it began functioning some time ago, and Mayor Rodgers tried to quiet that argument by announcing he had appointed it and wanted it to continue serving. At the suggestion of Mr. Cabell it then was given legal status by the council and two more members were added, but Mr. Suddarth opposed that because the group composed a majority of the body.

Mr. Cabell moved to abolish the committee as it stood and this was approved unanimously. Mr. Suddarth then moved to reconstitute it with the original three as members and that also was favored.

Mr. Noble said he expected negotiations to open soon on a reduction in electric rates for small and medium-sized commercial and industrial patrons that will save them at least $250,000 a year.

Utility Supervisor Frank R. Schneider would not discuss the proposal but it was understood he hopes to increase that figure, possibly by $100,000 or more a year. He also hopes to get a gas rate reduction worked out soon with the local company.

# Utah

## New President Announced

ELECTION of Herman B. Waters to the presidency of the Telluride Power Company was announced on March 1st by H. R. Waldo, company secretary. The election to fill the vacancy created by the death of Paul N. Nunn was made at a recent meeting of the board of directors.

The board, in deciding that Mr. Waters would continue as general manager, also appointed Paul P. Ashworth, formerly distribution engineer for the Utah Power & Light Company, as assistant general manager.

Mr. Waters has been associated with the Telluride Company for nearly thirty years, having been the engineer in charge of construction of the plant on Malad river near Thousand Springs, Ida., in 1911. He was chief engineer of the Idaho Power & Light Company before the Telluride Company sold that unit to the Idaho Power Company.

# Washington

## Power Tie-in Plan Approved

THE proposed new hydroelectric power intertie agreement between Tacoma and Seattle, in which the rate for surplus power sold by one city to the other is reduced from one-third to one-fifth of a cent per kilowatt hour, was approved on March 6th by the Seattle city council utilities committee.

The committee recommended for passage an ordinance embodying the modified agreement, which was sent to the council for final action. The city of Tacoma already has approved the plan.

# West Virginia

## Rate Schedule Revised

A REVISED rate schedule that will save $35,700 a year for eastern panhandle electric users resulted on March 2nd from a conference of the state public service commission and officials of the Potomac Light & Power Company.

The reduction order, entered in an investigation case started by the commission, will affect 11,823 domestic and 1,731 commercial consumers in Berkeley, Jefferson, Morgan, Hampshire, Hardy, Mineral, and Grant counties.

The new schedule, effective April 1st, is one of several reductions ordered for Potomac customers in the past four years.

# The Latest Utility Rulings

## Owner of Apartments Not Entitled to Combined Billing and Wholesale Rates

THE Pennsylvania Superior Court sustained a commission order denying the right of the owner of an apartment development to a wholesale electric rate. The owner contended that it was a single customer and had the right to receive service at one point. Bills for such service were being sent to and were being paid by the owner.

The company's tariff provided that tariff provisions applied to everyone lawfully receiving electric service from the company under the rates therein, and receipt of electric service should constitute the receiver a customer of the company. Another rule provided that rates named in the tariff for each class of service were based upon the supply of the service to one entire premise through a single delivery and metering point, and that separate supply for the same customer at other points of consumption should be separately metered and billed.

The court said that to permit separate customer units to combine for single-point service would be to violate the fundamental theory upon which the pricing of the company's tariff schedules were based. Any determination that the property owner constituted a single customer for the purposes sought in the complaint would, in the opinion of the court, be a discrimination against other retail customers similarly situated. *Land Title Bank & Trust Co. v. Pennsylvania Public Utility Commission et al. 10 A(2d) 843.*

## Indenture for Bond Issue Required to Be Modified

A TELEPHONE company was authorized by the California commission to issue, at not less than par, $18,000 of its first mortgage serial 5 per cent bonds and to use the proceeds to pay certain indebtedness. The commission required the company, however, to submit a revised indenture securing the payment of the bonds and ordered that its authorization should not become effective until the indenture was approved.

The proposed indenture provided in one section that the annual net earnings added to surplus should be determined according to sound telephone utility accounting practices, in connection with a restriction on dividend payments. The commission was of the opinion that this section should be revised so as to obligate the company to determine its annual net earnings according to the system of accounts prescribed by the state commission, or, in the absence of such a system of accounts, according to sound telephone utility accounting practices.

Another section of the indenture provided that any moneys paid to the corporate trustee and not expended within a period of two years after the deposit of the moneys with the trustee should be applied by the trustee as the company might direct, to the purchase of bonds of any series then outstanding. This language, the commission believed, should be modified so as to require the corporate trustee to select, in an impartial manner, the bonds to be redeemed through the use of such funds.

It had been proposed that the bonds be sold at not less than 95 per cent of their face value and accrued interest, but the commission ruled that the bonds should be sold for not less than par. *Re California-Oregon Telephone Co. (Decision No. 32790, Application No. 22899).*

## Commission Jurisdiction over Rate Contract

THE Federal Power Commission conducted hearings at the instance of the city of Los Angeles and the department of water and power of that city, to determine the reasonableness and lawfulness of electric rates prescribed by contract filed with the commission by the defendant company. The commission made findings and ordered rate reductions to be filed.

Jurisdictional questions were dealt with at the outset. It was decided that the defendant company is a public utility within the purview of the Federal Power Act, since it owns and operates facilities subject to the jurisdiction of the Federal Power Commission.

The defendant contended that the Federal Power Commission had no jurisdiction here because the complainant, city of Los Angeles, a municipality, and the department of water and power of that city are exempt from the commission's jurisdiction under § 201(f) of the Federal Power Act (16 USCA, § 824). This contention was overruled when the commission said:

> The defendant's contention in this respect is obviously without merit. Even if it be conceded that under § 201 (f) of the act the complainants are exempt from the commission's regulatory jurisdiction, nevertheless § 306 of the Federal Power Act specifically authorizes a "person" or "municipality" to file a complaint with the commission, and the city and the department are before the commission in the capacity of complainants involving the commission's authority over a public utility admittedly subject to the commission's jurisdiction.
>
> The authority of a Federal regulatory agency, in the exercise of the rate-making power vested in it by Congress, to modify a rate contract between a state or municipality and a public utility, has been settled beyond question.

Also, the commission ruled, it has jurisdiction over a rate schedule covering rates made, demanded, or received by a public utility in connection with the transmission or sale of electric energy by facilities subject to the commission's jurisdiction, notwithstanding that it was alleged that there was not, had not been, and actually might never be, any transmission of electric energy thereunder.

The defendant introduced in evidence estimates of the reproduction cost new of the properties involved. The commission, however, felt that the original cost of construction of the properties constituted the best evidence of the amount to be used as a rate base.

In support of its contention that the charges made were reasonable and just, the defendant introduced into evidence several rate comparisons. These, the commission observed, do not afford a proper basis for determining the reasonableness of the rates involved.

A return of 6 per cent on a rate base of $590,000 was held to be fair and reasonable. *City of Los Angeles v. Nevada-California Electric Corp. (Opinion No. 43, Docket No. IT-5512).*

## Department Store Operating Free Busses to Store Is Engaged in Public Utility Business

A CHICAGO department store, recognizing the difficulty of attracting customers from suburban towns who would have to pay two fares in order to reach its store, inaugurated a system of free bus service to and from the store.

The Illinois commission held that this was public utility service operated without authorization under Illinois law. Cessation of the service was ordered, and the matter was referred to the attorney general for the purpose of taking necessary and appropriate action to enforce the provisions of the order and of the Public Utility Act.

The contention of the store was that in operating free busses exclusively for the private use and convenience of its customers and patrons it was not engaged in the public utility business. The commission held that the statute defining a public utility does not make compensation an element in determining the character of a business, but it went further and ruled that there was in fact a consideration for the transportation. It was said that in lieu of a cash fare, the usual compensation for a carrier, the store desired that its passengers visit its store, that they should be its actual or prospective customers. Service was offered for the promise implied in fact of the passenger that he was or that he had been an actual or prospective customer. There was said to be a definite connection between the use of the bus system and the sale of goods. Those who purchased the goods paid for the service even though they might not use it.

Announcements of the service were distributed widely and circulars were neither intended for nor distributed to any select group of persons. They were directed to and were distributed freely among the general residents of the suburbs.

There was a solicitation to the entire public to come by way of the busses to shop at the store. All members of the public desiring to use the service might at will do so upon meeting the requirements that they be actual or prospective customers. Such a requirement was not considered a restriction of the use. The commission said:

> All public utilities have requirements which must be observed by the public before their service may be utilized. The fact that service is actually rendered only to the persons meeting the requirements does not thereby limit the use to such persons. The service is open to the public and all persons are free to take advantage of such service; hence, the use is public.

The fact that motor bus operations are conducted by a company which is obviously a mercantile concern, the commission held further, does not prevent its being clothed with a public use and consequently being of a public utility nature. The character of the service and not the character of the ownership determines ordinarily the power of regulation. *Brookfield v. Goldblatt Brothers, Inc. (25664).*

## Company Fails to Show Need for Higher Gas Rate

THE Pennsylvania commission instituted an investigation to determine the lawfulness of rates which the Peoples Natural Gas Company proposed to charge and, finding that the company failed to prove the lawfulness of the rates, held them to be unjust, unreasonable, discriminatory, and in violation of the Public Utility Law. The commission stated that the Public Utility Law required a public utility seeking authority to increase its rates to prove that the proposed rates are reasonable and just. (For further details, see p. 438.)

A public utility seeking authority to increase its rates, said the commission, has the burden of supplying its operating data, where the application is based upon an alleged deficiency in net income, which, in turn, depends upon the gross revenue available to the applicant less allowable operating expenses. The utility company did not supply these data.

The reasonableness of the rate paid for gas purchased from an affiliate for resale is another important factor, the commission held. On this phase of the case, the commission said:

A complaint was filed by this commission with the Federal Power Commission on March 23, 1939, to determine the cost of gas to the Peoples Natural Gas Company from Hope Natural Gas Company at the West Virginia-Pennsylvania state line. This complaint is docketed as G-127. Hearings were originally scheduled for December, 1939, and were postponed to April, 1940. A determination of this question is vital to the present issue. If respondent chooses to await the outcome of that case, it must bear the consequences. Respondent, as an affiliate of Hope Natural Gas Company, is obviously in the best position to prove the reasonableness of the rates charged by Hope. Moreover, here respondent's burden was especially heavy, as it involved not only a matter in justification of the increase in rates, but a transaction between affiliates.

It was also felt that the gas company should supply the commission with a computation of both annual and accrued depreciation based upon age and life. Such information, the commission said, is absolutely necessary for an accurate determination of depreciation. The commission determined that by failing to supply age-life figures the utility failed to sustain its burden with relation to the most important part of the case.

The commission finally decided that the proposed rate schedule was discriminatory and said:

> It is well recognized in rate making that it is impossible to base rates upon the cost of supplying the particular product to each consumer. If a determination of the cost to each consumer was to be attempted in this case, the Peoples Natural Gas Company would have some 150,000 different rate schedules. To choose a particular group, and particularly that group which is absolutely dependent upon the company's product, for increases in rates, and to attempt to justify those increases purely upon the basis of cost of supplying gas, is unconscionable and grossly discriminatory as we view the matter, and in violation of § 304 of the Public Utility Law.

*Pennsylvania Public Utility Commission v. Peoples Natural Gas Co. (Complaint Docket No. 12683).*

## Higher Rates to Seasonal Users

THE Wisconsin commission, in an investigation of rates of a municipal electric utility, found that the utility had seasonal rates on file providing for the billing of seasonal customers on the urban rate plus an additional $3 annual seasonal charge.

It appeared, however, that this rate had not been strictly applied. The commission approved a higher rate for seasonal service with the following statement:

> Higher rates to seasonal users are considered reasonable when consideration is given to the fact that seasonal service is short-term service and that for the most part seasonal users reside at some distance from the utility's urban distribution system, thereby occasioning relatively higher maintenance charges and line losses.

*Re Trempealeau (2-U-1487).*

## Trustee Permitted to Sell Unprofitable Utility Property to Competitor

THE Federal Circuit Court of Appeals held that the trustee of a public utility, unable to conduct the business except at a loss, was free to sell the physical assets to a public service corporation formerly a competitor. He did not, in the opinion of the court, occupy the status of a public service corporation within the meaning of a constitutional prohibition against the leasing or purchasing of the works of a competing public service corporation. Moreover, he could not be required to operate at a continuous loss. The trustee had surrendered the franchise granted to the company. The court said:

> A public utility cannot, in the absence of contract, be compelled to continue to operate

its utility at a loss. Fort Smith Light & Traction Co. *v.* Bourland, 267 US 330, 69 L ed 631, PUR 1925C, 604, 45 S Ct 249. The usual permissive charter of a public utility corporation does not give rise to any obligation on the part of the corporation to operate its utility at a loss. Nor can such an obligation be elicited from the acceptance of the charter or from putting the utility into operation. The corporation, although devoting its property to the use of the public, does not do so irrevocably or absolutely, but on condition that the public shall supply sufficient traffic on a reasonable rate basis to yield a fair return, and if at any time it develops with reasonable certainty that future operations must be at a loss, the corporation may surrender its franchise, discontinue operation, and dismantle and sell its physical properties. To compel it to go on at a loss or give up the salvage value of its physical properties would be to take its property without the just compensation guaranteed it by the due process clause of the Fourteenth Amendment, USCA Const.

*Phillips, Governor of Oklahoma, et al. v. Nelson et al. 108 F(2d) 725.*

## Contracts As Affecting Common Carrier Status Of Motor Vehicle Operator

THE status of a motor carrier is determined by what he does, not by whether he demands and obtains contracts from shippers. This principle was made the basis for an order of the California commission finding a trucking company to be operating as a highway common carrier without a certificate.

The company had entered into eight written contracts with shippers for the transportation of milk, and these were said to be the only operations which it conducted between the points involved in the commission investigation. It was brought out in the hearing, however, that the company also furnished transportation for compensation for certain others without private contracts. The commission said:

> One claiming to be a private contract carrier should have a mutually binding, bilateral, contractual relationship with those whom he serves. Even if it were assumed that the only patrons served by the defendant are the eight with whom it has alleged contracts, nevertheless, such contracts must meet the test required as a legitimate bona fide contract. Upon such assumption defendant may not escape regulation by obtaining eight identical contracts which are subject to cancellation upon the mere whim of either party thereto. The contracts between defendant and these eight shippers fall short of constituting a mutually binding, bilateral relationship which is required of a person contending to be a private carrier.

The commission said that such written contracts do not alter a company's common carrier status if they are being used merely as a means to escape regulation. *California Milk Transport, Inc. v. Standard Trucking Co. Inc. et al. (Decision No. 32798, Case No. 4373).*

## Other Important Rulings

A CIRCUIT court judge in Wisconsin held that the section of the statute giving the commission authority to rule on removal of railway stations and station agents in towns and villages was unconstitutional. The court set aside a commission order denying authority to discontinue the maintenance of a full-time railway agent. The court held that the delegation of power was unlawful as it left the whole matter to the unlimited, uncontrolled whims and caprices of the commission. *Chicago & Northwestern Railway Co. v. Wisconsin Public Service Commission.*

The railroad commission of California has held that where a telephone company's authority to issue securities to reimburse its treasury for expenditures heretofore made for plant additions and betterments provides that no more than

a specified amount may be paid as commissions to the underwriters, if more than such amount is paid, the difference between what is paid and the sum specified must be charged to surplus. *Re Associated Telephone Co. Ltd. (Decision No. 32682, Application No. 23159).*

The Montana commission authorized a town to abandon electric service where service under the Rural Electrification Administration would be more efficient and render greater service to consumers. The commission said that where a utility seeks to abandon service and the same service will be rendered by some other utility or agency, this is a legal ground for granting a petition for abandonment. *Re Town of Hysham (Docket No. 3132, Report and Order No. 1753).*

The California commission held that water utilities must own all meters in order to avoid discrimination which might arise if consumers are required or allowed to own or rent the meter. *Re Dominguez Water Corp. (Decision No. 32739, Application No. 22763).*

The superior court of Pennsylvania recently held that a common carrier's right to due process of law as guaranteed by the state and Federal Constitutions was violated when the commission rescinded its right to operate and also imposed a fine without filing a formal complaint containing specific charges of violation of law. *Armour Transportation Co. v. Pennsylvania Public Utility Commission, 10 A(2d) 86.*

The United States Court of Appeals for the District of Columbia held that a licensee could appeal, as a person aggrieved or whose interests are adversely affected by a commission's refusal of an application for transfer of a radio license, where the licensee and the proposed assignee had joined in the application, and the proposed assignee could appeal as an applicant for a radio station license. *Associated Broadcasters, Inc. v. Federal Communications Commission, 108 F(2d) 737.*

The Federal Circuit Court of Appeals, First Circuit, held that the public service commission of Puerto Rico had power to prohibit motor vehicles not previously authorized by the commission to act, serve, function, or operate as public carriers for the transportation of passengers by seat, offering, rendering, or giving its service to the public in general between certain municipalities. *Ortiz et al. v. Public Service Commission of Puerto Rico et al. 108 F(2d) 815.*

The Federal Circuit Court of Appeals, Eighth Circuit, sustained a district court injunction against the enforcement of the Nebraska Full Train Crew Law as interpreted by state officers, holding that a railroad which had designated one of its crew as a "brakeman and porter" was not violating the law. The brakeman-porter was fully qualified as a brakeman, performed all the brakeman's work on the train, and, in addition, if and when his duties as brakeman permitted, also did some porter work. His employment was held to be a compliance with the statutory requirement of a brakeman. *Beal et al. v. Missouri Pacific Railroad Corp. 108 F(2d) 897.*

The California commission declared that in a proceeding for authority to continue to charge less than established minimum rates where there is an absence of information relative to the estimated cost of transporting the traffic involved, and a lack of substantial evidence to indicate that the rates in question have been and may be expected to be compensatory, obviously no finding can be made that such rates are reasonable, and without such a finding a carrier cannot be authorized to perform at less than established minimum rates. *Re Coöperative Delivery Service, Ltd. (Decision No. 32791, Application No. 22429).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 32 PUR(NS) NUMBER 2

## Points of Special Interest

# Titles and Index

## TITLES



## INDEX

# Re Nevada-California Electric Corporation

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*Security issues, § 1 — What constitutes issue — Overprinting of certificates — Dividend change.*

2. A substantive change in preferred stock dividend rights, accomplished by amendment of articles of incorporation and the subsequent overprinting of a legend stating the changes on outstanding share certificates, constitutes an issue of securities within the purview of § 204 of the Federal Power Act, p. 66.

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3. Interpretation by the Interstate Commerce Commission of § 20 (a) of the Interstate Commerce Act, so as to include within the meaning of the word "issue any securities" a change in dividend rights on preferred stock, is persuasive as to the intent of Congress that the similar language in § 204 (a) of the Federal Power Act is to be similarly interpreted, p. 66.

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*Security issues, § 50 — Grounds for denying approval — Exchange for illegal issue.*

6. Authority should be denied for the issuance of stock to be exchanged for other stock which was illegally issued without authorization by the Commission, since approval of such an issue would, in effect, be an indirect ratification of the earlier issue, beyond the power of the Commission, p. 70.

[December 22, 1939.]

APPLICATION *for authority to issue stock; refused.*

By the COMMISSION: By the order this day entered in the above-entitled matter, denying the application of the Nevada-California Electric Cor-

poration for an order authorizing the issuance of 6 per cent cumulative dividend preferred shares and 8 per cent noncumulative dividend preferred shares and the issuance of split-up shares of common stock and reduction of the aggregate par value of common stock outstanding, all proposed to be issued in exchange for outstanding shares, the Commission is not denying the company the opportunity to accomplish, in a proper way, an improvement in its financial structure.

As indicated in the application, the improvement in its financial structure which the company seeks to accomplish by the change in its preferred stock is desired in order to provide a somewhat greater assurance of ability to secure funds to meet long-term obligations maturing in 1941; the reduction in the aggregate par value of the common stock is desired to make possible a credit to Capital Surplus account against which an "Acquisition Adjustment" account can be written off as and when required by this Commission. However, the Commission is of the opinion that the particular way chosen by the company to accomplish its purposes must be held objectionable for two reasons: first, because it would place in the market an 8 per cent preferred dividend share; second, because the requested authorization would in effect ratify a previous security issue for which no authorization by this Commission was obtained as required by the act and which is now not legally susceptible to direct authorization by this Commission.

[1] The company desires to issue, in place of its formerly outstanding 7 per cent cumulative dividend preferred shares, half as much in aggregate par value amount of 6 per cent cumulative dividend preferred shares, and the other half, of 8 per cent noncumulative dividend preferred shares. Under the new shares, the company's aggregate annual dividend requirements, if earned, would remain the same as formerly, but if not earned, would accumulate at the rate of only $3 per $100 aggregate amount of par value of preferred shares, instead of $7 yearly.

Notwithstanding the fact that the company's position would be either unchanged or bettered, we believe that the issuance of the proposed 8 per cent preferred shares, with the approval of this Commission, would be misleading and would tend to create confusion as to the justifiable rate of return on such a security. Under present conditions we are of the belief that authorization of an 8 per cent preferred stock is not compatible with the public interest.

[2–4] The second objection requires for its understanding a reference to a prior transaction which is in reality an integral part of the method by which the company has proposed to accomplish its present objective. When the company projected its proposed change from 7 per cent cumulative preferred dividend shares to half 6 per cent cumulative and half 8 per cent noncumulative, it divided the proposed procedure into two transactions: the *substantive* change in dividend rights it purported to accomplish by an amendment of its articles of incorporation at a stockholders meeting March 20, 1939, and the subsequent overprinting of a legend stating the changes on outstanding share certificates. Thereby the dividend right on

each $100 preferred share was to be changed from a $7 cumulative preferred dividend to a $3 cumulative preferred dividend plus a $4 noncumulative preferred dividend. That transaction, which may be referred to as the March transaction, was not submitted to this Commission for authorization. The second transaction, which we will refer to as the October transaction, is that for which authorization is now sought, and consists of the change in the *form* of the shares evidencing the substantive rights as purportedly changed by the March transaction. This was proposed to be accomplished pursuant to a further amendment of the articles of incorporation at a stockholders meeting October 17, 1939. By the October transaction, it is proposed to exchange for each $100 share having the $3 cumulative and $4 noncumulative preferred dividend rights, two $50 shares, one carrying a 6 per cent cumulative preferred dividend right, the other an 8 per cent noncumulative preferred dividend right.

The practical effect of the procedure adopted is that the important substantive aspect of the proposed change has purportedly been accomplished, and confronted with that fait accompli the Commission is asked now to approve a change in the form of the shares in which that substantive change shall hereafter be clothed. In making this statement we do not wish to be understood as impugning the company with any motive or intention of deliberately seeking to withhold the substance of the transaction from our consideration in violation or evasion of statutory requirements. The proper interpretation of the requirements of the act may not have been free from the possibility of differing views by persons striving in good faith to comply with the provisions of the act. We wish to be understood as merely speaking of the practical effect of what has been done, wholly apart from any question of motive or intention.

We have found that the effectuation of the March transaction would constitute an issue of securities within the purview of § 204 ( 16 USCA, § 824). That determination follows naturally from a previous decision of this Commission. In the order adopted June 27, 1939, Re Otter Tail Power Co. Docket No. IT–5533 (29 PUR(NS) 129), we found that a change of shares from no par to $1 par value and the concurrent split of four for one shares constituted an issue of securities within the meaning of § 204. In that case the applicant company had amended its articles of incorporation to authorize the changed shares of stock and had added to its articles of incorporation a paragraph providing in effect that each share without par value "outstanding immediately prior to the effective date of this amendment shall by virtue of this amendment be and become four . . . shares of the par value of one dollar each." The applicant there proposed to issue certificates representing the shares "created by the . . . amendment" dated as of the effective date of the amendment, after the matter of authorization by this Commission had been disposed of. It asked this Commission to determine that the proposed transaction was not an issue of securities but if the Commission found that it was, to authorize such issue. The Commission refused the first request, finding that the proposed transaction

would constitute an issue of securities within the meaning of § 204, and issued its order conditionally authorizing the issue.

We are of the opinion that the present applicant's March transaction is not to be distinguished from that case, as the applicant contends it should be. In that transaction the company's articles of incorporation were amended March 20, 1939, to authorize the changed preferred stock by limiting the right to 7 per cent cumulative dividends "only to and including the 31st day of March, 1939," and adding the provision:

"From and after the 31st day of March, 1939, the owners and holders of the preferred shares of stock shall be entitled to receive, when and as declared from the surplus or net profits of the corporation, dividends at the rate of 3 per centum per annum, which shall be cumulative, and shall be payable before any dividends on the common stock shall be paid or set apart, so that, if in any year, dividends as last above defined, shall not have been paid upon the preferred stock, the deficiency shall be payable before any dividend shall be paid upon, or set apart for the common stock. In addition thereto, from and after the 31st day of March, 1939, the owners and holders of the preferred shares of stock shall be entitled to receive, when and as declared, from the surplus or net profits of the corporation, dividends at the rate of 4 per centum per annum, which shall be payable before any dividend shall be paid upon or set apart for the common stock, but shall not be cumulative, so that, if in any year, dividends as last above defined, shall not have been declared upon the preferred stock, then the right of the owners and holders to the whole or portion of said noncumulative dividends which shall have been undeclared in such year shall cease. . . ."

In notifying its stockholders of the adoption of that amendment under date of March 27, 1939, the corporation advised them:

"All holders of preferred and common stock are requested to send their stock certificates to the Transfer Agent, The International Trust Company, Denver, Colorado, for the purpose of having printed thereon the changes effected by the above-mentioned amendment."

Clearly the mere difference that in the Otter Tail Power Company Case, *supra,* new share certificates were to be issued while in the March transaction the old share certificates were to be overprinted with a legend showing the changed rights, is no ground for distinguishing the cases. Equally clearly, to our way of thinking, the fact that the Otter Tail Power Company Case, *supra,* involved a stock split-up and change from no par to par value stock while the March transaction involved a change in dividend rights only, affords no sufficient basis for distinguishing the latter as being exempt from the provisions of § 204.

Even more clearly insufficient is the other distinction attempted to be drawn by the present applicant between the March transaction and the October transaction which it is not denied is an issue of securities. The amendment of the articles of incorporation in October authorized the shares of stock as proposed to be changed and then provided:

"Upon the effective date hereof, the

shares of the respective classes of stock theretofore issued and then outstanding shall, automatically, be converted into shares of the respective classes of stock hereby authorized . . .; from and after the effective date hereof, the shares of all the respective classes of stock which were authorized prior to the effective date hereof, both issued and unissued, shall be void."

It also appears that the officers of the corporation were authorized to issue and deliver to stockholders share certificates evidencing the rights of the stockholders in accordance with such amendment, and to receive, cancel, and retire certificates of stock theretofore issued and outstanding. The foregoing statement is sufficient, we believe, to show that the October transaction cannot be distinguished from the March transaction so far as the applicability of § 204 is concerned.

Rejecting, then, both of the attempted distinctions, it remains only to be considered whether our position in the Otter Tail Power Company Case should be adhered to.

Applicant, in its memorandum brief, submitted October 14, 1939, argues that "issue any security" as used in § 204 of the Federal Power Act (Title II of the Public Utility Act of 1935) must be given the same meaning as "issue . . . any security" in § 6 (a) (1) of the Public Utility Holding Company Act of 1935 (Title I of the Public Utility Act of 1935) (15 USCA, § 79f), because the two questions are in pari materia. Pointing out that while the provisions of § 6 (a) (1) are used in conjunction with the provision in § 6 (a) (2) relating to the "exercise (of) any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security" no corresponding language is found in the Federal Power Act, applicant argues that transactions within the scope of the language used in § 6 (a) (2) must be regarded as excluded from the meaning of the language of § 6 (a) (1) and the corresponding language of § 204.

In our opinion the specific enumeration in § 6 (a) (2) should not be construed as restricting or qualifying the meaning of the more general language in § 204. If we look to the legislative history of § 204 we find that in the report of the Senate Committee on the bill containing the section which afterward became the law in question (Senate Report No. 621, 74th Cong., First Sess., page 50) it was stated:

"The section follows § 20a of the Interstate Commerce Act in defining the conditions under which authorization is to be given, the Commission's power to issue orders and the duty of the public utilities to comply with such orders. . . ."

A comparative reading of § 204(a) of the Federal Power Act and par. 2 of § 20a of the Interstate Commerce Act shows how very closely indeed the Congress followed the language of the earlier act in framing § 204(a). At the time it did so, the language "issue any securities" used in § 20a had been clearly interpreted by the Interstate Commerce Commission to include a change in dividend rights on preferred stock. See Increase in Dividend Rate on Preferred Stock by the Virginia Railway, 72 Inters Com Rep 473, decided August 23, 1922. In that case the Virginia

Railway Company proposed to increase the dividend rate on its outstanding preferred stock from 5 to 6 per cent. The Commission mentioned that: "The applicant proposes to procure the necessary amendment to its charter, and to evidence the increase by indorsement upon Certificate No. 38 which represents all of the 279,550 shares of preferred stock now outstanding" and said: "We are of the opinion that the increase in the dividend rate on the preferred stock, in the manner specified, is a matter within our jurisdiction under par. 2 of § 20a of the Interstate Commerce Act. . . ." Upon familiar grounds of statutory construction we regard this interpretation by the Interstate Commerce Commission of the meaning of the language of § 20a persuasive as to the intent of Congress that the similar language in § 204(a) was to be similarly interpreted. Accordingly, we have held that the change in dividend rights as of March 31, 1939, would be an issue of securities for which the authorization of this Commission is required by § 204(a) of the Federal Power Act.

**[5, 6]** Such authorization not having been obtained before the purported effectuation of the issue, this Commission's authorization for that issue cannot now be obtained. The section (16 USCA, § 824c [a]) is explicit in its provision that no security can be issued within its terms "unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability." This language makes it clear that the Commission is not empowered to authorize an issue of securities within the scope of the section if the issue has purportedly been effectuated. The necessity for this Commission's consideration of security issues before they have been accomplished if the act is to be successfully administered is, we believe, obvious. But to grant the present application would be to authorize the issuance of new securities in exchange for the illegally issued (and therefore void or voidable) securities purported to have been issued heretofore, thereby in effect indirectly ratifying what we have no power under the act to directly authorize. This seems to us sufficient in itself to require that the present application be denied.

Although it is a question of state law not now before this Commission, the amendment of the applicant's articles of incorporation by its stockholders' action of March 20, 1939, would appear to be susceptible to the interpretation that it constituted authorization for the issuance of the shares of preferred stock having the changed dividend rights, which authorization continues to be valid and effective regardless of the illegal and void or voidable way in which the issuance of such shares pursuant thereto has heretofore purported to be effectuated, and that such purported effectuation can now be treated as either null and void, or as merely voidable, as the case may be, under state law and, if merely voidable, can now be canceled or otherwise avoided, and thereafter, upon authorization of this Commission first duly procured, the issue of preferred shares with changed dividend rights as authorized by the amendment of the articles of incorporation can then be validly effectuated.

At the same time, or subsequently thereto, the company may be able to propose a further change or new method for the issuance of forms of preferred shares which will be satisfactory to it and will not be subject to the objection pointed out by the Commission's finding number (7) in the order this day adopted.

The company should note, however, that further remedial measures should be considered than have thus far been proposed, for the improvement of its financial condition.

In the first place, the proportion of fixed income securities to the company's total capitalization will still be excessive. As a result of this fact and the further fact that the interest rates, and the preferred dividend rates on such securities will still be relatively high, the burden which they impose on the company's net income must tend to restrict the possibility of favorable financing in the future. It may be that after a thorough canvassing of the situation, preferred stockholders who are also holders of common stock might find it to be in their interests to agree to accept in exchange for their preferred shareholdings, shares of a new issue of common stock. It has been noted that as of December 31, 1938, the twenty largest stockholders of the corporation held 72,310 of the outstanding 85,883 shares of common and 60,327 of the 114,612 shares of preferred stock.

In the second place, the operating expenses of the corporation increased markedly during 1936, 1937, and 1938, reaching levels, on a unit basis, considerably higher than those of other electric utilities of generally similar characteristics. Certain increases appear to have been of a temporary nature and some downward readjustment of expenses may, therefore, be expected. While still further reductions in such expenses may be rendered difficult by specific operating conditions, constructive consideration of the subject might establish a basis for considerable improvement in net income, thereby assuring more favorable circumstances for future refunding operations.

An appropriate order of the Commission will be entered in accordance with this opinion.

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*NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION*

# Re Queens Borough Gas & Electric Company

[Case No. 8403.]

*Rates, § 362 — Street lighting — Increment cost — Relative use.*

Neither the increment cost method nor a basis of relative use should be fol-

lowed in every respect in determining the reasonableness of electric rates for street lighting.

[November 28, 1939.]

PROCEEDING *on motion of Commission as to electric street lighting rates; discontinued.*

APPEARANCES (as to this matter only): Gay H. Brown, Counsel (by George E. McVay, Assistant Counsel), for the Public Service Commission; Griggs, Baldwin & Baldwin (by Charles G. Blakeslee) New York city, Attorneys for the Queens Borough Gas and Electric Company; W. C. Chanler, Corporation Counsel (by Harry Hertzoff, Assistant Corporation Counsel), New York city, for the city of New York; Leonard R. Hanower, New York city, Special Counsel representing the Corporation Counsel of the city of Long Beach; James J. McCoy, New York city, appearing for the mayor of Long Beach.

MALTBIE, Chairman: The subject here being considered is the reasonableness of the rates being charged for street lighting service by the Queens Borough Gas and Electric company in the city of Long Beach.

In an opinion dated November 22, 1938, and approved December 20, 1938, it was determined that the rates to general consumers charged by the Queens Borough Company were unjust and unreasonable. New rates were fixed estimated to save general consumers between $520,000 and $530,000 per annum. It was also decided that municipal street lighting rates as a group were excessive and that a reduction of about $30,000 per annum would be justified. However, all of the street lighting rates were then covered by contracts except those for the city of Long Beach. No determination was made of the rates that should be charged in that area, but it was decided that an opportunity should be given the representatives of the city and of the company to reach a schedule acceptable to both parties.

A hearing was held soon thereafter (January 13, 1939) at which time attention was called to the statements in the opinion above referred to and the hope was expressed that the city and the company would be able to reach an agreement. It was also stated by the chairman that he had been advised that the parties had not yet been able to reach an agreement and that if no agreement were reached, the Commission would, of course, exercise the powers conferred by statute.

It was pointed out that reasonable rates for street lighting depend upon a number of factors which should naturally be determined by the municipality itself, such as the number of hours that the lamps should be lighted, the type and energy consumption thereof, the extent to which underground or overhead distribution lines should be used, the requirements as to replacements, the extent to which this work should be done by the company or by the city, and a number of other factors.

At this hearing an opportunity was given to the parties in interest to submit testimony, but no witnesses were called and the case was adjourned

without date to give the staff of the Commission an opportunity to make an investigation and the city and the company to reach an agreement.

Upon May 5th, a hearing was held after due notice and the chairman stated that he had been advised that no agreement could be reached and that the matter would need to be decided by the Commission. It was again stated that while the Commission had found the amount of reduction that seemed reasonable for *all* street lighting, it was obviously impossible to apply a percentage to all municipalities equally, that as the city of Long Beach had presented no statement regarding such fundamental characteristics as the number and character of lamps to be used, the hours supplied, renewals, etc., the Commission would assume that the system was to remain as it is and that conditions of operation would be substantially those in vogue in recent years. It was also stated that as data were now available for the year 1938, the staff of the Commission would consider data applicable to that period. The parties were notified that the next hearing would be on the 19th of May and that the Commission would then be prepared to receive whatever testimony the company or the city of Long Beach desired to submit.

Upon the adjourned date, the city and the company again stated that they had no testimony to present. As the Commission staff was not ready to present the results of their studies, an adjournment was taken to May 31st, at which time Mr. Orton, director of research and valuation for the Commission, testified explaining at length what had been done and the tables which had been prepared. The company requested an adjournment to afford counsel an opportunity of examining the tabulations.

From questions asked the witness, it appeared that the character of the street lighting load as compared with that of other consumers had been given no special effect. The street lighting load is peculiar in that it goes on and off as a unit at a definite time known precisely in advance. The amount of the load throughout this period does not fluctuate except in a negligible amount, the load usually being represented on charts by a rectangular area, whereas the consumption of other customers is fluctuating and changeable and affected continually by conditions which are not known in advance.

At the next hearing, General Blakeslee, counsel for the company, cross-examined Mr. Orton; and Mr. McCoy, representing the city of Long Beach, went into the testimony much more extensively.

One of the peculiarities of the Queens Borough System is that the production demand of that company is considerably more in the summer than in the winter. In 1938, the summer peak was 25,700 kilowatts, and the winter 21,000 kilowatts. The total generating capacity of the company was 35,600 kilowatts. These figures show that the excess capacity over the summer load was about 40 per cent. The exhibit prepared by the bureau of research and valuation assumed that a pro rata share of this excess was attributable to the street lighting load, notwithstanding the difference in character of the general load from the street lighting load.

It also appeared that according to

the allocations used, the average cost per kilowatt hour used for lighting the streets of the city of Long Beach was about 1⅛ cents including operating expenses, depreciation, taxes, and a 6 per cent return, and that the company was selling current to the Long Island Lighting Company at 9 mills per kilowatt hour and to the Long Island Railroad at about one cent.

In respect to load factor, the difference between a street lighting system and the Long Island Railroad is very marked. The latter was about 20 per cent. The exact figure for the street lighting system is not given in the record but it was said to be "away above that."

It was suggested, on the other hand, that the street lighting load is on the peak of the system and the Long Island Railroad load was off-peak. These statements were modified later. The Long Island Railroad load is on the winter peak and so is the street lighting load, but in the summer time, the railroad load is off-peak; but the difference between the summer and winter peaks for the entire company is greater than for the street lighting load.

Mr. Orton was asked whether he had computed the cost of street lighting in Long Beach according to the increment method and he said he had not. Exhibit 194 Id. was merely an allocation of costs based upon certain assumptions, the fundamental assumption generally being the relationship of use, but without sufficient weight to certain fundamental differences which really affect costs.

Upon July 17th, further testimony was presented by Mr. Mackler, of the Commission's staff, who explained the source and method of derivation of many figures used in Mr. Orton's exhibit and Mr. Orton again testified presenting two exhibits—195 and 196. Exhibit 195 Id. was to take the place of Exhibit 194 Id. Exhibit 196 Id. purported to represent the cost of street lighting in the city of Long Beach upon the basis of 1938 operations, the costs of such street lighting being computed upon the increment cost basis. Mr. Orton explained fully the revised methods used and the differences between Exhibit 194 and Exhibit 195.

It is unnecessary to discuss the various differences. Mr. Orton definitely testified that he desired to substitute Exhibit 195 for Exhibit 194 and that in his opinion the new exhibit more accurately represented the cost of street lighting in the city of Long Beach based upon the company figures for 1938 than did Exhibit 194 Id.

Exhibit 196 was upon the increment cost basis which Mr. Orton defined as follows:

"By the increment costs basis I mean the additional costs incurred by adding a particular unit of business to a property already set up to serve other business.

"In preparing this study I have applied this basis upon what I consider a long-term rather than a short-term viewpoint. That is, I have considered what the cost is going to be on the average over the growth of the plant for a considerable period of time rather than merely what it would cost to take in a small amount of additional business and serve it for a short period.

"I have done that in view of the nature of the street lighting business

which is a continuing and permanent business. If you are figuring increment cost for a temporary business or something which could be dropped any time the company decided they did not want to serve it, why, the result would be quite different.

"Following this long-term viewpoint I have attempted to charge the street lighting business with any spare plant used up even though the plant was already there, is there, and could take additional business without any immediate increase in the amount of spare plant. This applies particularly to land and to some extent to structures at the generating station and also at the substation.

"On the other hand, where there were cases where the amount of a particular type of property doesn't change with an increase in the business over a very considerable, or, within very wide limits, why, I have not changed it.

"I might illustrate the difference in treatment: If you are considering a case where the addition of additional business would cause a lateral increase in a building, I consider that it should be charged with part of the land, even though the original building still had sufficient land to cover the increase. On the other hand, if it were taken care of by additional stories I wouldn't consider that it should be charged with a portion of the land cost because taking care of the additional business by adding additional stories makes no difference in the land. The same land furnishes both. That is just an illustration. There is no such case exactly in this instance."

Following this testimony, Mr. Orton proceeded to explain in detail how the exhibit was prepared and how each figure therein was obtained.

The company requested an adjournment for the purpose of examining the new exhibits, and at a later hearing General Blakeslee for the company probed very deeply into the figures and into the increment cost method in general. He even asked Mr. Orton to express an opinion as to the weight to be given to each of the methods he used, although this was really a question to be determined by the Commission and not by a witness.

After Mr. Orton had been thoroughly examined by counsel for the company, Mr. McCoy conducted a brief cross-examination. At the close of this testimony, the company was again asked if it had any testimony to present. As counsel replied in the negative, the hearing was closed. Thus, the case was left without any testimony on behalf of the company or the city of Long Beach to rebut or refute the exhibits and testimony presented by Mr. Orton. In view of such lack of conflict as to the basic facts and allocations made by the bureau of research and valuation, it is unnecessary to consider in detail the various figures in the two exhibits, the methods of allocating various items of cost, and the dependability of the conclusions reached.

The two exhibits represent the extremes. The increment cost analysis indicates that upon the basis of revenues received from street lighting in the city of Long Beach during the year 1938, the company obtained $5,767 more than the cost of the service. Exhibit 195, which represents a computation upon the basis of relative use without, in my opinion, adequate con-

sideration of certain factors already mentioned herein, shows a deficiency below a fair return of $1,543. The total difference between the two methods is $7,310. If we were to adopt the increment cost method, the rates charged the city of Long Beach for street lighting during the year 1938 should be reduced approximately $5,800 without consideration to the effect upon taxes which such a reduction would make. Upon the basis used in Exhibit 195, the street lighting rates of 1938 should be increased by about $1,600, or upon the average about 3 per cent.

In view of all of the facts, I conclude that neither method or exhibit should be followed in every respect. Generally, the increment cost method fixes a minimum limit for rates. If a certain class of business does not yield sufficient revenue to cover the cost of the service rendered, assuming that such service is merely to bear the costs which such service imposes and that all other services are to bear all of the cost of providing a plant and its other operations, such service should not generally be rendered, as it imposes a financial burden upon the stockholders or upon other consumers. There may be instances where the increment cost method would practically determine the rate that should be charged, but I do not believe that in determining street lighting rates it should be followed or be allowed generally to be the dominant factor. Certainly, in this case, much less weight should be given to the increment cost method than to the results shown in Exhibit 195.

There is one special factor to be considered in this case. The company and the city of Long Beach have had considerable litigation and the city has not paid its bills for street lighting with reasonable promptness. It is not our function to apportion the responsibility for this condition. Suffice it to say that the city is not entirely blameless. There should be some recognition of the deferment of payment and my conclusion is that an order requiring the reduction of the 1938 rates for street lighting in the city of Long Beach would not be justified.

The record does not furnish a basis for determining whether the rates have a reasonable relation each to the others; but neither the company nor the city has presented any testimony which would permit the Commission to make any findings upon this point.

I recommend, therefore, that an order be entered discontinuing the proceeding as to street lighting rates in the city of Long Beach.

Commissioner Brewster not present.

# Re Southern Continental Telephone Company

[Docket No. 2363.]

*Security issues, § 5.1 — Outstanding bonds — Increase in premium call rate.*

1. A modification of outstanding bonds and the accompanying mortgage indenture, so as to render such bonds a more attractive investment or a more valuable asset by increasing the premium call rate, should be supported by adequate considerations, p. 78.

*Intercorporate relations, § 13 — Contracts between affiliates — Scrutiny by Commission.*

2. The Commission must closely scrutinize all contracts between an operating utility and its holding company to ensure that ample consideration in the way of benefits to be derived should be made available to the operating company to set off against any additional burdens which may be assumed by that party, p. 79.

*Security issues, § 5.1 — Outstanding bonds — Increase in premium call rate.*

3. Authority should not be granted to increase the premium call rate on outstanding bonds in the hands of a parent company in order to increase marketability of the bonds, unless adequate benefits are accorded to the operating company as a consideration for the change in the bond contract, p. 80.

*Security issues, § 5.1 — Outstanding bonds — Increase in premium call rate — Benefit from change.*

4. Receipt by an operating company of the profits by a parent company from the sale of bonds previously sold to the parent company as a result of an increase in the premium call rate constitutes an ample consideration to the operating company for the additional burdens and liabilities which it assumed in consenting that the premium call price be increased, p. 80.

[December 19, 1939.]

PETITION *for authority to amend outstanding mortgage bonds and the indenture of mortgage securing such bonds by increasing the premium call rate; granted subject to conditions.*

By the COMMISSION: This matter came on to be heard on the 15th day of December, 1939, upon the petition of the Southern Continental Telephone Company, heretofore filed with the Commission, asking approval of the Commission to amendment of petitioner's outstanding first mortgage 4½ per cent 25-year sinking-fund bonds, serial A, and the indenture securing said bonds.

The petitioner presented a number

of witnesses who testified in support of said petition. Testimony was also presented on behalf of the Continental Telephone Company, holder of said bond issue. The hearing was continued and on December 19th additional evidence was introduced before the Commission.

It appears to the Commission that upon petition of the Southern Continental Telephone Company, in an order in Docket No. 1988, issued on June 23, 1936, the Commission approved a bond issue in the amount of $1,300,000 of first mortgage 4½ per cent 25-year sinking-fund bonds to mature July 1, 1961, series A, which said bonds have been issued in temporary form and of which $1,287,000 are now outstanding and unpaid; and that the premium call rate in the indenture securing said bond issue was 4 per cent if the bonds were redeemed before July 1, 1941; 3 per cent if redeemed between July 1, 1941, and July 1, 1946; 2 per cent if redeemed between July 1, 1946, and July 1, 1951; 1 per cent if redeemed between July 1, 1951, and July 1, 1956; and that there was no premium call on any amount of bonds redeemed after July 1, 1956, and until maturity.

The present petition seeks to change the conditions of the indenture aforesaid so as to provide that the premium call rate shall be changed and raised from that set out above to provide as follows:

(1) If redeemed at the option of the Southern Continental Telephone Company before July 1, 1941, to 10 per cent; if redeemed between July 1, 1941, and July 1, 1946, to 9 per cent; if redeemed between July 1, 1946, and July 1, 1951, to 7 per cent; if redeemed between July 1, 1951, and July 1, 1956, to 5 per cent; if redeemed between July 1, 1956, and July 1, 1957, to 4 per cent; if redeemed between July 1, 1957, and July 1, 1958, to 3 per cent; if redeemed between July 1, 1958, and July 1, 1959, to 2 per cent; if redeemed between July 1, 1959, and July 1, 1960, to 1 per cent; and if redeemed after July 1, 1960, and before maturity to one-half of 1 per cent.

(2) If the redemption is through the sinking-fund plan, as set up in the indenture, the premium call rates originally approved in the indenture and as set out above shall be changed to 6½ per cent if the redemption is before July 1, 1941; 6 per cent if redemption is between July 1, 1941, and July 1, 1946; 5 per cent if redemption is between July 1, 1946, and July 1, 1951; 4 per cent if redemption is between July 1, 1951, and July 1, 1956; 2 per cent if redemption is between July 1, 1956, and July 1, 1959; 1 per cent if redemption is between July 1, 1959, and July 1, 1960; and one-half of 1 per cent if redemption is after July 1, 1960, and before maturity.

[1] It is the insistence of petitioner company that several benefits will inure to it if the premium call rate is increased in the manner prayed for in the petition. When closely analyzed, however, these benefits inure not so much to the petitioner as to the holding company and only secondarily will inure to the benefit of petitioner, such secondary benefits being stated by one of the witnesses as follows, to wit: that it is always of benefit to the operating company to have the holding company in a strong financial position. It is quite true that such a remote and intangible factor might have weight

with the operating company, but on the other hand the petitioner is consenting to a change of a tangible nature. It further appears in the record that the Continental Telephone Company, which owns all of the bonds in question, and likewise owns 100 per cent of the capital stock of petitioner, as a part of the general program for simplifying the corporate structure of operating and holding utilities in the United States, is to be eliminated as an intermediate holding company. A bond indenture and outstanding bonds thereunder constitute an existing contractual obligation between the issuer of those bonds on the one part, and the present holder of the bonds for value on the other part. A modification of the contract which renders such bonds a more attractive investment or a more valuable asset on the one part, should be supported by adequate consideration.

[2] It is unfortunate that the close relationship existing between an operating utility and its holding company makes arm's length dealings between these two parties to a contract well-nigh impossible. It is accordingly incumbent upon the Railroad and Public Utilities Commission, which guards the interests of the users of utility services in the state, to closely scrutinize all such contracts, to assure that ample consideration in the way of benefits to be derived should be made available to the operating company within the state to set off against any additional burdens which may be assumed by that party.

It is the insistence of petitioner that aside from any benefits to be derived from the changes proposed in the indenture and bonds, it will be in no worse position than it now is as a result of the changes. It appears that insurance companies at the present time are seeking long-term investments. The bond market throughout the entire country is going through a period at which interest rates are unusually low, and numerous utility bond issues, formerly financed on a high interest rate, are now being called for refinancing upon very much more favorable rates. Such insurance companies as are desirous of obtaining long-term investments desire to have an assurance that the bonds they purchase will not in all probability be called for refinancing. The petitioner emphatically insists that it is very improbable, if not impossible, even upon the present low-interest bond market, for it to favorably refinance.

The Commission is struck by the fact, however, that the petitioner has been unable to satisfy those responsible for the investment of the funds of those insurance companies which are interested in this particular issue of bonds, that the circumstances surrounding the petitioner company are such that petitioner could not beneficially refinance its obligations under such terms as would render it advisable to call them. If the insurance companies could not be convinced, the Commission should not too hastily be convinced either. The insurance companies evidently believe that the call price of these particular bonds is a very material consideration and affects the value of same to any person who is desiring to obtain a long-term investment. On the other hand, the Commission knows that the public and users of the telephone services furnished by the petitioner are affected by

any change in interest rates which might enable the company to operate more economically. If the call rate is material to the insurance companies, it is equally material to the interests of the public, which is at all times entitled to know that utility services are being supplied and that utility financing is being furnished at the lowest possible cost.

[3] Raising the premium call rate is accordingly placing an additional burden upon the company, which may affect the interests of subscribers adversely. The Commission is accordingly of the opinion that such an increase in the rate of call should not be authorized by the Commission unless adequate benefits are accorded to the petitioner as a consideration for this change in the bond contract.

[4] It is further apparent that the action which petitioner has taken in modifying the contract on its bonds, at a date several years after they were issued and sold, most assuredly has the effect of increasing the value of these bonds in the hands of the present holder. It is immaterial that the present holder happens to be the holding company. The holding company purchased these bonds at a cost which was approved by the Railroad and Public Utilities Commission. This price was $960 for each $1,000 bond. It now appears that if the terms of the contract are modified as prayed for by petitioner, the present holder of the bonds will be enabled to sell them for approximately $1,057.50 for each bond of a par value of $1,000 of said bond issue. This represents an increase in the value of the bonds amounting to $97.50 per bond. What part of this increase in the value of these bonds is attributable to the change in the premium call price no witness has testified, and the Commission is unable to determine with exactness. In spite of this, the Commission is satisfied that the value of these bonds will be enhanced by the changes contemplated and agreed to by the petitioners and the holders of the bonds. There has naturally been some expense incurred by the Continental Telephone Company in disposing of these bonds, but the Commission has been assured that this expense does not exceed 2½ per cent, or in other words $25 per bond of $1,000 face value.

On the original hearing, the president of petitioner company was asked by Commissioner Jourolmon whether the holding company would be willing to pay into the treasury of the petitioner the profits from the present sale of the bonds, thus giving the petitioner company the advantage of the increased value of these bonds brought about by the very changes in the contract which are agreed to by the petitioner. On the hearing the president of petitioner did not believe that the holding company would consent to this, but thereafter the matter was discussed with the executives of the Continental Telephone Company which agreed to the suggested arrangement, and it was thereupon stipulated in the record that, after expenses involved in acquiring and disposing of the bonds, not to exceed $25 per $1,000 face value bond, have been defrayed, the excess of the sales price over the amount for which the bonds were originally purchased, to wit: $960 per $1,000 face value bond, will be paid into the treasury of the Southern Continental Telephone Company.

where this fund might then be applied to rehabilitation and extensions of the latter company's lines, an improvement which is badly needed. Upon the $1,287,000 of bonds which remain outstanding at the present time, such an arrangement will result in the payment to the treasury of the petitioner company of approximately $93,300 at least. The Commission is of the opinion that this constitutes ample consideration to petitioner company for the additional burdens and liabilities which it assumes in consenting that the premium call price be increased in the manner recited in the petition and set out herein.

It is hereby *ordered* by the Commission that approval and authority of the Commission be and they hereby are granted to the petitioner, Southern Continental Telephone Company, to amend its indenture of mortgage dated July 1, 1936, and the petitioner's first mortgage 4½ per cent 25-year sinking-fund bonds, series A, issued under said indenture, to the extent of changing the premium to be paid upon redemption of any of such bonds so that such bonds of series A shall henceforth be redeemable in whole or in part at any time prior to maturity, at the option of the petitioner or through the operation of the sinking fund provided in the indenture, upon at least sixty days' prior notice given as provided in Art. 8 of the indenture and upon payment of the principal amount of the bond or bonds to be redeemed, interest accrued thereon to the date of such redemption and, if such redemption is at the option of the company, a premium equal to 10 per cent of such principal amount if such redemption be effected on or before July 1, 1941, 9 per cent of such principal amount if such redemption be effected after July 1, 1941, and on or before July 1, 1946, 7 per cent of such principal amount if such redemption be effected after July 1, 1946, and on or before July 1, 1951, 5 per cent of such principal amount if such redemption be effected after July 1, 1951, and on or before July 1, 1956, 4 per cent of such principal amount if such redemption be effected after July 1, 1956, and on or before July 1, 1957, 3 per cent of such principal amount if such redemption be effected after July 1, 1957, and on or before July 1, 1958, 2 per cent of such principal amount if such redemption be effected after July 1, 1958, and on or before July 1, 1959, 1 per cent of such principal amount if such redemption be effected after July 1, 1959, and on or before July 1, 1960, and one-half of 1 per cent of such principal amount if such redemption be effected after July 1, 1960, and prior to maturity, and, if such redemption is through the operation of the sinking fund, a premium equal to 6½ per cent of such principal amount if such redemption be effected on or before July 1, 1941, 6 per cent of such principal amount if such redemption be effected after July 1, 1941, and on or before July 1, 1946, 5 per cent of such principal amount if such redemption be effected after July 1, 1946, and on or before July 1, 1951, 4 per cent of such principal amount if such redemption be effected after July 1, 1951, and on or before July 1, 1956, 2 per cent of such principal amount if such redemption be effected after July 1, 1956, and on or before July 1, 1959, 1 per cent of such principal amount if such redemption be effected after July

1, 1959, and on or before July 1, 1960, and one-half of 1 per cent of such principal amount if such redemption be effected after July 1, 1959, and on or before July 1, 1960, and one-half of 1 per cent of such principal amount if such redemption be effected after July 1, 1960, and prior to maturity.

Provided, however, that upon the sale of said bonds by the Continental Telephone Company, the present owner and holder thereof, any amount received from the sale thereof by said holder in excess of $985 for each $1,000 principal amount of said issue of bonds shall be paid over to the Southern Continental Telephone Company for cash-working capital and the changes in the original indenture hereby approved are granted on this condition.

It is *further ordered,* that within sixty days following the transfer and sale of said bonds the Southern Continental Telephone Company shall file with the Commission a complete report of said sale thereof, setting forth the actual amount of expenses connected therewith and the sale price of said issue, together with the name of the purchaser; and that said statement be under oath, sworn to by an officer of the Southern Continental Telephone Company.

It is *further ordered,* that the Commission retain jurisdiction in this cause and issue such further and future orders as it may deem necessary from time to time.

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*OHIO COURT OF APPEALS, STARK COUNTY.*

# Correll

*v.*

# Ohio Bell Telephone Company

(— Ohio App —, — NE(2d) —.)

*Contracts, § 15 — Regulatory restrictions.*

1. Public utilities are by law regulated strictly in their operation, their rights or duties incurred by virtue of contractual relationships being subject to statutory regulation; ordinary contractual relationships do not apply, and an action will not lie for an alleged breach of contract where such matter is governed and controlled by law, p. 83.

*Contracts, § 15 — Statutory restrictions — Regulation.*

2. One dealing with a public utility whose functions are prescribed by law must deal with it with a knowledge of the law in force governing it and the possibility of its contracting with him, p. 83.

*Service, § 434 — Telephone — Directory listing — Breach of contract — Filed tariff.*

3. Compliance with the state laws and the filing with the Commission of a

tariff containing a limit upon the liability of a telephone company on account of errors in, or omissions from, directories, constitutes a defense to a claim for damages for breach of contract on the ground that the telephone company failed to list a subscriber's name in alphabetical section of the telephone directory as agreed, p. 83.

[October 10, 1939.]

APPEAL *from judgment overruling demurrer to defense in suit to recover damages for breach of contract because of omission of name from alphabetical section of telephone directory; affirmed.*

MONTGOMERY, J.:

[1–3] By his petition filed in the court of common pleas the appellant sought to recover damages for a breach of a contract. He averred that an agreement had been entered into between the defendant and the law firm of Hart, McHenry & Jones, wherein it was provided, as an incident thereto, that the name, office address, and office telephone number of the plaintiff should be listed in the regular white section of the telephone directory to be issued by the defendant. The petition averred the publication and circulation of this telephone directory, but that from said issue the name, office address, and the telephone number of this plaintiff had been negligently omitted. The claim was that by reason of the aforesaid neglect the plaintiff had suffered great loss of business and had been damaged to the extent of $10,000.

To this petition an answer was filed. The first defense denied the making of the contract pleaded, and denied that the plaintiff had suffered any loss. As a second defense the answer pleaded compliance with the laws of Ohio and the filing with the Public Utilities Commission of Ohio a general exchange tariff which it was averred was on file at and prior to the time mentioned in plaintiff's petition, and averred that the parties were, and are, governed by the terms thereof. The answer specifically pleads § 6, par. M, of this tariff or schedule, which is in the following language:

"The telephone company, except as provided herein, shall not be liable for damage claimed on account of errors in or omissions from its directories nor for the result of the publications of such errors in the directory nor will the telephone company be a party to controversies arising between subscribers or others as a result of listings published in its directories. Claims for damages on account of interruptions to service due to errors or omissions in directory listings will be limited to a pro rata abatement of the charge for such of the subscriber's service as is affected, the maximum abatement not to exceed one-half the service charges for the period from the date of issuance of the directory in which the mistake occurred to the date of issuance of a new directory containing the proper listing."

A demurrer to this second defense was overruled and, the plaintiff not desiring to plead further, final judgment was rendered against him, and from

this judgment an appeal was perfected to this court.

It will be seen, therefore, that the plaintiff bases his claim for damages upon a breach of contract and defendant seeks to avoid liability therefor by virtue of a compliance with the laws of Ohio limiting liability.

A public utility is by law regulated strictly in its operation. Rights and privileges which it might seek under ordinary contractual relationships are curtailed by provisions of the statutes. Its liabilities are likewise regulated and limited by statute. The theory is this that, rendering a service affecting the public, the state shall regulate and control it in order to prevent injustice, and, further, in consideration of such regulation and control, its liability is and should be defined and limited. In a sense it is a matter of contract, on the one hand by the utility, and on the other by the state representing all its citizens.

Under § 614–2, General Code, a telephone company is designated as a common carrier, hence, a public utility. Section 614–16 of the General Code, requires every public utility to print and file with the Public Utilities Commission schedules showing all rates and charges, and all rules and regulations affecting the same. Section 614–18 prohibits any public utility from extending any rule or regulation, except as specified in the schedule so filed.

This answer avers the compliance by the Ohio Bell Telephone Company with these statutory requirements, and avers the specific provision heretofore quoted, which limits liability for damage in cases such as the one now before us for consideration.

As heretofore indicated, it is our view that the ordinary contractual relations do not apply and that an action will not lie for damages for an alleged breach of a contract when such matter is governed and controlled by law. It is true that the plaintiff may have had no knowledge of the existence of this schedule, but certainly one dealing with a public utility, whose functions are prescribed by law, must deal with it with a knowledge of the law in force governing it and the possibility of its contracting with him. The law in force governing or affecting such public utilities, therefore, becomes a part of the contract, or rather the rights and liabilities under the contract must be determined with reference to the law in effect.

Counsel for appellee with propriety rely upon the case of Western U. Teleg. Co. v. Esteve Bros. & Co (1921) 256 US 566, 65 L ed 1094, 41 S Ct 584 [Bulletin No. 1220]. That case is directly in point. There the record shows the Western Union Telegraph Company had filed a schedule with the Interstate Commerce Commission, and its schedule contained a limit upon its liability similar to the limit placed in the schedule now before us. In the one case it was a utility governed by the Interstate Commerce Act, and in the other a local utility subject to the Public Utilities Commission of Ohio. The principle involved in the two cases is identical. As stated by Mr. Justice Brandeis in the course of his opinion appearing upon pages 571 and 572:

". . . But the rate, long before established, then formally adopted and filed, was thereafter the only lawful rate for an unrepeated message, and the limitation of liability became the

lawful condition upon which it was sent. . . .

"The company could no more depart from it than it could depart from the amount charged for the service rendered. . . .

"Uniformity demanded that the rate represent the whole duty and the whole liability of the company. It could not be varied by agreement; still less could it be varied by lack of agreement. The rate became, not as before a matter of contract by which a legal liability could be modified, but as a matter of law by which a uniform liability was imposed. Assent to the terms of the rate was rendered immaterial, because when the rate is used, dissent is without effect."

The judgment of the court of common pleas is affirmed.

Sherick, P. J., and Lemert, J., concur.

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*ALABAMA PUBLIC SERVICE COMMISSION*

# Mrs. Ed. Allen et al. Citizens of Tuscaloosa

*v.*

# Alabama Power Company

[Docket No. 7247.]

*Rates, § 352 — Electric — Residential service.*

1. The word "residence" or "individual family apartment" as used in the availability clause of the residential service rate schedule, stating that electric service is available for service to residences and individual family apartments within urban areas, does not include rented rooms in buildings separate from the main residence under the supervision and control of the resident consumer, even though such buildings are situated on the same premises, p. 90.

*Rates, § 352 — Electric — Commercial service.*

2. Rented rooms in a building separate from the main residence, serviced under the supervision and control of the resident consumer, could come within the scope of the word "premises" as used in the availability clause of the rate schedule for commercial or general electric service so as to be served thereunder, p. 90.

*Rates, § 313 — Combined billing — Electric — Residential service.*

3. Electric service to a main residence and to rented rooms in buildings separate from the main residence, serviced under the supervision and control of the resident consumer, and located on single premises, cannot be combined so as to be received under a residential rate schedule which states that "service to more than one residence or apartment shall not be combined," p. 90.

*Rates, § 352 — Electric — Residential service — Commercial service.*

4. Consumers who have rented rooms and buildings separate from the main residence, serviced under the supervision and control of the resident consumer, may receive electric service under the residential rate schedule if they separate the wiring of such building, whereas those who refuse to separate the wiring must receive such service under the commercial rate, p. 90.

(HARRISON, Commissioner, dissents.)

[October 14, 1939.]

COMPLAINT *against alleged unreasonable rates for electric service; service plan outlined in accordance with opinion.*

APPEARANCES: Gordon Davis, Attorney, Tuscaloosa, for the complainants; W. M. Stanley, Vice President, Alabama Power Company; H. A. McWhorter, of Martin, Turner & McWhorter, Birmingham, for the defendant.

By the COMMISSION: The petition in the above-entitled case was filed by Mrs. Ed. Allen and twelve other citizens of the city of Tuscaloosa, Alabama, against the Alabama Power Company on the 20th day of March, 1939, and, after due notice to proper parties, was set down for hearing at 9 o'clock A.M. on the 21st day of April, 1939, at the courthouse in Tuscaloosa, at which time and place hearing was had. There appeared, among others, on behalf of the complainants, Hon. Gordon Davis, attorney, and on behalf of the Alabama Power Company its attorney, H. A. McWhorter, and certain officials and employees of said company.

The petition alleges that the Alabama Power Company had charged or was attempting to charge certain consumers among whom were complainants, without the consent and over the objection of said consumers, what is known as the commercial or general service rate under circumstances and conditions where the domestic or residential rates for electric energy had been previously charged.

The petition further alleges that due to the inability of the officials of the University of Alabama to provide rooming facilities for its rapidly growing student population, there had grown up the practice on the part of certain citizens living in the territory adjacent to or in the vicinity of the university of erecting in the rear of their homes on the same lots on which their homes are located, separate additional buildings containing rooms for "roomers" and generally called "garage apartments."

In case of one complainant, W. H. Archer, it appears he has two such separate apartment buildings on the same lot on which his residence is located, another such apartment building on an adjacent lot and two other separate apartment buildings of this type across an alley on another lot. Complainant, F. S. Heim, has his residence and two of such separate apartment buildings on the same lot on 7th avenue and seven separate apartments of this type on a lot on 10th street. Complainant H. Pettus Randall has four of such separate apartment build-

ings on one lot but does not maintain his residence in any of the buildings on this lot. All of the other complainants have one or more of such separate apartment buildings for roomers on the same lot upon which their residences are located.

The term "garage apartment" is not properly applicable to these apartments, because few, if any of them, contains a garage as a part thereof. In the ordinary use of the term, "garage apartment," it means an apartment of rooms, usually not more than one or two, built over a garage. It is necessary to call attention to the misuse of this term as applied to the apartment buildings of complainants, because it has been, and is, the practice of the defendant, Alabama Power Company, to include the usual garage apartment along with the residence or family apartment building as an appurtenant building belonging thereto in applying the "A–8" rate applicable for service for a residence or individual family apartment building.

Rooms in these garage apartments, it is further alleged, are rented at a monthly rate to students attending the University of Alabama, and no effort made to rent the rooms in these garage apartments to the general public, either by day or other period of time. The rooms are rented, it is alleged, as a rule for eight months of the year, while during a period of four months the rooms are almost entirely vacant.

It is alleged by complainants that "the same maid service that takes care of our homes takes care of the garage apartments in the rear of our homes; that the only electrical current used in them is for lighting purposes," and that complainants consider "These apartments as being a part of our homes, and feel that the electric current used there should be on the same basis as that used in our homes."

Complainants further allege that for over a period of two years, approximately, these garage apartments were operated in connection with the respective homes of complainants, with the electric current passing through a single meter attached or connected with the home proper, and thence to these apartments, without regard to number of rooms in garage apartments served, and that the residential rate for such electric energy was charged for such service by the Alabama Power Company with a knowledge of the then existing circumstances and conditions.

The complainants further allege that about ninety days before the filing of the petition in this case the "Alabama Power Company billed your petitioners current to each of them separately on what is known as a commercial rating, to which at that time objection was made and petitioners continue to so object."

The petition further alleges in "changing your petitioners' current rating from what is known as the residential rate to what is known as the commercial rate is unfair, unreasonable, unjust, unfairly and unjustly discriminatory against your petitioners."

Prior to the taking of evidence in the case, counsel for the defendant company and for complainants each made an opening statement at the hearing.

Among other things, counsel for defendant stated:

"As I understand the complaint, there is no attack made on the reason-

ableness of either of the rates involved, but it relates solely to the application of the rate, and the claim of discrimination in the application, and not anything that you might say attacks the rates themselves."

To this statement counsel for complainants replied as follows:

"Well, that is not my understanding of the petition. Of course, in stating that the main contention is discrimination, of course, the unreasonableness of the rates to the parties affected is also attacked. I think my petition makes that clear."

It is the view of the Commission, therefore, that the unreasonableness, vel non, of the rates to the parties affected was put in issue in this case.

Alabama Power Company, defendant, in answer to the above petition says that the defendant's rates "A–4" and "A–8" for urban residential service, as approved by this Commission by its order in its Non-Docket 1030, dated March 28, 1936, provides that "Service to more than one residence or apartment shall not be combined or resold or shared with others but shall be for the exclusive use of the consumer." Defendant avers that the bases for such provision are that such rates are designed for service delivered to single residences and single apartments in order that each customer will pay a pro rata part of other than direct costs to provide the service; that if services to two or more customers are combined and the bill calculated on the basis of a single service to one customer, a part of such costs is thereby avoided and must be absorbed by other customers of the defendant, resulting in discrimination against its customers having service for single residences; and that supplying electric service through wires strung across public streets and alleys or from one building to another frequently creates additional hazards to persons and property resulting in increased costs to the defendant of supplying such service and thereby imposing an unjust burden on all other customers of the defendant.

Defendant further replied that it made periodic checks of customers' premises and use of electric energy supplied by it to ascertain whether proper rates were applied, that in making such inspection in March, 1938, it discovered that the complainants were being served in such a manner and under such conditions as to make Rates "A–4" and "A–8," in its opinion, not applicable but that the service should have been billed on the General Service Rate "C–6," as approved by the Alabama Public Service Commission in Non-Docket No. 1108, May 12, 1937; that defendant then advised such consumers as the inspection showed were receiving electric current through a single meter for more than one residential building, that it would be necessary and that the company would require such consumer to separate the wiring of the different buildings so that each building could be served as a separate residence, and failing to have the wiring so separated the power company would be required to render service at defendant's General Service Rate "C–6."

The defendant further replied that its investigation showed that such conditions existed at both Auburn and University in numerous instances and that after notice was issued to consumers as above stated, a large num-

ber of consumers changed or separated the wiring as requested but that others did not and all those that did change were served on the residential rate and those not changing were charged the "C–6" rate.

Defendant further says its residential rates "A–4" and "A–8" are not applicable to complainants and other customers similarly situated, but that the only rate of company that is available is Rate "C–6," which company charged after notice was given and complainants failed to separate wiring as advised or requested.

According to the evidence all of the complainants had separated their wiring prior to the hearing except the following who failed or refused to do so and are being billed at the "C–6" rate, namely: H. P. Randall; Mrs. E. F. Allen; W. H. Archer; Mrs. H. P. Bailey and Mrs. Besaw and G. Ackerson.

There was no evidence as to the reasonableness of either the "A–4," "A–8" or "C–6" rates as constructed, the evidence being devoted to the application of these rates and the alleged discrimination caused by such proposed application. There was some evidence that the Alabama Power Company charged the "A–4" or "A–8" rate to residential customers occupying their respective homes, with a much larger number of rooms and a greater number of student roomers than some of the complainants had, and it was contended that should the "C–6" rate (which is higher than "A–4" and "A–8" rate) be charged to complainants while "A–4" or "A–8" rate was charged to such other customers, that it would be unjust and unfair and discriminatory to complainants.

The evidence showed further that when billed at the "C–6" rate, some of the consumers had declined to pay at that rate for electric energy used.

The availability clause of Rates "A–4" and "A–8," Urban Residential Service, approved by this Commission in Non-Docket 1030, March 28, 1936, reads as follows:

"Available, on the basis provided herein, for service to residences and individual family apartments within urban areas, except where another service classification has been approved by Alabama Public Service Commission. *Service to more than one residence or apartment shall not be combined nor resold or shared with others but shall be for the exclusive use of the consumer.*"

The applicability clause of Rate "C–6," General Service, approved by this Commission in Non-Docket 1108, May 12, 1937, reads as follows:

"Applicable to any consumer for commercial or general service other than family residential or large industrial service. *Service to one or more premises shall not be combined nor resold or shared with others, but shall be for the exclusive use of consumer.*"

The defendant company has three general rate classifications, namely: residential, commercial, or general service and industrial service. There is no contention here by anyone that complainant's service falls within the industrial service classification, therefore, it remains to determine whether the service called for by complainants under the conditions and circumstances shown by the evidence must be classed as residential and if it does not fall within the description of residential service, then it can only fall with-

in the commercial or general service, because plainly it is not industrial.

[1] We have set out above the availability clause of rates "A–4" and "A–8," which apply to residential service and it is very plain from the language set out, that the service entitled to receive the residential rate is the service to residences and to individual family apartments. Unless we distort the usual and ordinary meaning of our language, we cannot stretch the word "residence" or "individual family apartment" to include as a group such separate apartment buildings for roomers as complainants have erected and maintained under the circumstances above set forth.

[2, 3] The availability clause of residential service rate further provides that, "service to more than one residence or apartment shall not be combined."

While the availability clause of rate "C–6," for commercial or general service, provides that "service to one or more premises shall not be combined" it must be considered that the word "premises" in this context is a more inclusive term than the word "residence" or "individual family apartment." The term "residence" or "individual family apartment" may without violence to the language be taken as including a building, such as a garage, even though it has built as a part thereof a limited number of rooms as is frequently done, because such garage building is commonly appurtenant to a residence or individual family apartment.

On the other hand, the word "premises" as used in similar context, has many times been construed to be a more inclusive term and to include the buildings located upon a distinct and definite lot or location.

See 49 Corpus Juris, 1328 and authority cited.

In the case of the applicability clause of said rate "C–6," the buildings served would be limited to those of the consumer.

In other words, without doing violence to the language and the usual acceptation of these terms, all of the several apartment buildings of any one of these complainants situated upon a single premise could be served under rate "C–6."

For the reasons we have pointed out, however, combined service to all such apartment buildings on a single premise cannot be combined and receive service under said residential rate.

[4] An analysis of the evidence in this record shows that if the separate buildings of each complainant are combined and are served through one meter on said rate "C–6," his billing will be substantially higher than if each of such buildings is separately wired and service is rendered through a separate meter for each building on the residential rate. Because of this fact and under all the circumstances of this case, the Commission is of the opinion that it will be just and reasonable, not only to these complainants, but to all other customers similarly situated, to provide that those customers who have separated their wiring of such buildings as well as those who have not, and other customers similarly situated may receive service in accordance with the plan hereinafter set out.

Under this plan all such customers who have separately wired their build-

ings may continue to be served on the residential rate, or if they prefer to do so, they may combine the service to all such buildings including a residence on a single premise through one meter and receive service under rate "C–6" as modified herein for service to this class of customers, at approximately the same cost as in the case of such customers who receive service under the residential rate after the buildings are separately wired.

It is therefore *ordered* by the Commission, that defendant Alabama Power Company, serve the complainants and others similarly situated in accordance with the following plan:

1

Apartment rooming houses located on the same premises with the proprietor's residence.

(a) The family residence and appurtenant buildings will be served at the available residential rate. Appurtenant buildings will include only a garage and one building which together shall have not more than two rooms that are used or adapted for use as living quarters.

Each separate additional apartment building located on the lot with the proprietor's residence which is used or adapted for use as living quarters will be served at the available residential rate, if metered and served separately from all other buildings; appurtenant buildings as defined in (a) next above may be included therewith.

(b) All such buildings of a customer located on the same premises, and not separated by public streets or public alleys, may be served as a single customer through one meter at the company's rate "C–6" applicable to general service.

Where the service is provided to such customers at rate "C–6," the capacity requirements shall be determined as follows:

The capacity requirements of the family residence and appurtenant buildings as defined in 1–(a) above shall be counted as 300 watts.

The capacity requirements of each separate additional apartment building shall be counted on the basis of 75 watts per room, excluding bath rooms, hallways, and entrances.

2

School dormitories and apartment rooming houses which are not located on the same premises with the proprietor's residence.

Service shall be provided at Rate "C–6" and the capacity requirements shall be determined as follows:

(a) The capacity requirements for all connected loads other than the lighting in the bedrooms, study rooms, and bath rooms shall be determined as now provided in Rate "C–6."

(b) To the capacity requirements as determined in 2–(a) above shall be added 75 watts of capacity requirements for each bedroom and study room; bath rooms shall be excluded in determining such capacity requirements.

It is *further ordered* that, the effective date of this order shall be the date that general service Rate "C–6" was first applied to customer's service, or, on the date that the customer separated his wiring.

It is *further ordered* that, defendant promptly advise all customers affected by this order within thirty days

of the adjustment in their account for electric service and furnish the Commission with a copy of such notice of adjustment.

HARRISON, Commissioner, dissenting: The petition filed in this case alleges that the petitioners have been discriminated against in that they are being charged the "C–6" rate, or general service rate when they were legally entitled to be served on the "A–8" rate, or residential rate. The sole question presented to the Commission in this proceeding is which of the rates as presently constructed properly applies to the electric service rendered by defendant to the petitioners at the time the petition was filed, and prior thereto. There was no evidence attacking or defending the reasonableness of either rate. The contents of the complaint as filed, with evidence in support of same, determine the issues in a case, not the alleged statements of counsel. Whatever faults or inequities may be contained in the present rate structures they are not at issue in this case, they must be reserved for another time in a different proceeding when the utility, as well as the public affected, has had reasonable notice and opportunity to present evidence and argument for or against such proposal.

The facts in this case show clearly that the conditions existing at Tuscaloosa with respect to the construction of garage apartments and electric service to be rendered to such apartments are peculiar to that locality and Auburn, and were not in contemplation at the time the "A–4" and "A–8" and "C–6" rates of Alabama Power Company were constructed. This is clearly shown when we study carefully the rules and regulations and component elements and clauses of such rate structures.

The availability clause of Rates "A–4" and "A–8," Urban Residential Service, approved by this Commission in Non-Docket 1030, March 28, 1936, and the applicability clause of Rate "C–6," General Service, approved by this Commission, Non-Docket 1108, May 12, 1937, are set out in the preceding opinion of the Commission.

It will be observed that the availability clause of the "A–4" and "A–8" rates contains practically the same inhibition with reference to service to more than one residence or apartment as is contained in the "C–6" rate. It is perfectly clear and plain from above that service under one rate is as applicable or inapplicable as service under the other when there is more than one premise or building or a combination of buildings or premises, if the number of buildings or premises was the only element considered in application of rate.

If this be true, and a review of the clauses in each rate as set out in the preceding opinion will show it is, then as to which rate should be applied the Commission will have to look to other sources.

The applicability clause of Rate "C–6" says that that rate is "applicable to any consumer for commercial or general service *other than family residential* or large industrial service." The facts in this case show that at least a part of the electric energy supplied was used for "family residential" purposes, except as hereinafter set forth.

The Alabama Power Company, in

1938, submitted to this Commission for approval on the 2nd of July, 1938, certain special rules governing application of Rate "C–6," which were approved on the 13th day of July, 1938, by this Commission's Non-Docket 1120, and in which rules and regulations we find use being made of the following language:

"The following specific cases shall be considered as general service:

*"1 (a). Boarding or rooming house.* A boarding and/or rooming house which holds itself out as ready and willing to rent individual rooms for one day only and/or serve single meals to transients other than occasional guests of its regular boarders.

*"1 (e). Some improper rate applications.* Any residence building which has been remodeled so that service is rendered to more than one apartment and/or family. Any case where service to two or more premises has been connected through one meter until the wiring has been corrected and each of the premises receives separate service. Any urban service to which another rate is applicable until consumer has contracted for such service at the applicable rate."

The evidence shows without contradiction or denial that this is a case where "service to two or more premises has been connected through one meter" *before the wiring* had been corrected and each of the premises received separate service."

Under its own rules and regulations as above quoted Rate "C–6" only applies to a "boarding house and/or *rooming house which holds itself out as ready and willing to rent individual rooms for one day only and/or serve single meals to transients other than occasional guests of its regular boarders."* (Italics ours.)

The company has undertaken to make such an application of Rate "C–6" which in its own rules and regulations it says is an improper application of such rate.

Under all the facts in the case, together with a careful reading of the availability and applicability clause of the several rates and the rules and regulations of the power company as to the application of Rate "C–6," I am of the opinion that as now constructed Rate "C–6" is not applicable to the complainants except as hereinafter recited, and they cannot properly be charged for electric energy used under the circumstances shown in the case on such rate.

In order to arrive at a conclusion in this case it will be necessary to determine what is a "residence" or "apartment," and if under the testimony introduced at the trial of this cause the buildings designated as "garage apartments" were such different buildings as not to constitute a part of the "residence" of consumers. A careful reading of the testimony will show that the use of the term "garage apartments" is a misnomer. They are not, as used, apartments at all, being merely rented rooms in a building separate from the main residence, serviced at all times under the supervision and control of the resident consumer. The evidence shows, further, that the electric energy supplied to these separate buildings was used by complainants in furnishing lights to students occupying rooms in these buildings in rooms of students living in the main residence. There was no evidence to show that any effort was made by any of the

complainants to charge to any of the student roomers any part of the electric service rendered by the defendant. There was no attempt on the part of any of the complainants to either *"combine, resell, or share with others"* the electric energy with which complainants were supplied, but it was purchased for the *"exclusive use and benefit of complainants"* in supplying lights to the student roomers.

The availability clause in Rate "A–8," as above set forth, only provides that "service to more than one residence or apartment shall not be *combined nor resold, or shared with others, but shall be for the exclusive use of the consumer."* It does not say a consumer shall only use the electric energy supplied in only one building on the residential lot or premise. A reading of the latter part of the clause inferentially provides against combination, resale, or sharing with other consumers the electric energy supplied through a single meter.

In my opinion, had these separate buildings, when erected, been attached or connected to the main residence, by a gallery or porch, covered or not, by which means a person could pass from one building to the other, then they would have constituted and been considered a part of the main residence, and electric service would have been rendered through a single meter on Rate "A–8" without question, and properly. But where the several buildings are not on the same lot or premise as the main residence, but are separated from the same by an alley or street, then they are no part of the residence, and defendant in rendering service to such separated buildings suffers additional and different hazards, and electric energy should be supplied on Rate "C–6," unless a party occupying one of these separated buildings rents it as a unit and assumes service and control of same, in which event it would be a separate residence or apartment and each building so rented should be served by a single meter on Rate "A–8." Where there is no main residence occupied by consumer on the lot or premise with the building in which rooms are rented, then the several buildings are not a part of residence and should be served on Rate "C–6."

The rate inserted by a majority of the Commission in the opinion in this case is neither the present residential or general service rate, and no notice of such a proposed rate was ever given to either the utility or public, it, therefore, could not be placed upon the utility, and should not be forced on the public.

The capacity requirements of the proposed "C–6" rate are entirely different from those in the present "C–6" rate which is now in effect under which complainants have been billed. Even though it were proper or legal to apply the proposed new rate in this case, it should not be made effective. It is too complicated and indefinite and combines services which the majority of Commission in their opinion say cannot be combined. The proposed rate reads as follows:

"(a) The family residence and appurtenant buildings will be served at the available residential rate. Appurtenant buildings shall include only a garage and one building which together shall have not more than two

rooms that are used or adapted for use as living quarters.

"Each separate additional apartment building located on the lot with the proprietor's residence which is used or adapted for use as living quarters will be served at the available residential rate, if metered and served separately from all other buildings; appurtenant buildings as defined in (a) next above may be included therewith."

It will be observed that the appurtenant buildings may be a "garage and one other building which shall not have more than two rooms that are used for living quarters." Certainly the size of the appurtenant building is not prescribed in the present "A–8" rate structure, so if it ("A–8" rate) can be applied to a building which has one or two rooms used as living quarters, it may rightfully and legally be applied to such a building when having more than two such rooms.

It is recited in the opinion of a majority of the Commission "that it is the practice of the Alabama Power Company to include the usual garage apartment along with the residence or family apartment building as an appurtenant building belonging thereto in applying the 'A–8' rate," and it further declares that "the term 'garage apartment' means an apartment of rooms, usually not more than one or two, built over a garage."

There is nothing in the present "A–8" rate that refers to "appurtenant" buildings. If no reference is made to such buildings in the rate then how can the utility, by usage or practice, formulate a rate which has not been submitted to or approved by this Commission that permits service to a building or group of buildings (so long as same does not include more than two rooms used as living quarters) and at the same time denies service to a similar building simply because it has three rooms occupied by roomers?

If the construction placed by the Commission on the word "premise" in the "C–6" rate, is correct and proper, several apartment houses owned by a single customer and located on "same premise," and not separated by public streets or public alleys, can be served through one meter at the "C–6" rate. Then a customer, by like reasoning, who owns an entire block can build eight or ten stores or more, dependent upon size of store or block, and have all of them served by one meter on the "C–6" rate so long as the customer agreed to rent the stores and furnish electric service.

Guided by the construction of the several availability clauses of the several rates as now constructed, as set forth above, it is my opinion that electric service should be rendered to the several complainants in the case on the following rates: Mrs. E. F. Allen, Mrs. H. P. Bailey, Ralph W. Adams, Mrs. James T. Hardwick, Mrs. W. W. Kicker, H. G. House, Mrs. H. J. Smith, Mrs. Marie Besow, Mrs D. M. Nowlin, and T. J. Hollis should each be served through a single meter, on Rate "A–8," that complainant, H. Pettus Randall, not occupying a residence on same premises as the buildings in which rooms are rented to student roomers, should be served on Rate "C–6"; that complainant, W. H. Archer, should be served at his residence, 1225 8th street, on Rate "A–8," but in the two separate buildings across the alley from his residential lot, he

should be served on Rate "C–6"; that complainant, F. S. Heim, at his residence, 1003 7th street, should be served on rate "A–8," and in the six separate buildings, 716 10th street, he should be served on Rate "C–6."

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*CALIFORNIA RAILROAD COMMISSION*

# Re Market Street Railway Company

[Decision No. 32467, Application No. 22954.]

*Security issues, § 9 — Extension of maturity date — Treatment of intercorporate indebtedness.*

1. A public utility which has been authorized to refinance certain of its outstanding bonds, by extending the maturity date and reducing the interest rate, should not be allowed to pay interest on indebtedness to a controlling corporation until the bonds as extended by such plan have been paid in full, p. 99.

*Security issues, § 9 — Refinancing — Rights of bondholders.*

2. A Commission order authorizing a public utility to refinance certain of its outstanding bonds, by extending the maturity date and decreasing the interest rate, does not compel any holder thereof to deposit them under the plan, since it is for them to determine whether they can realize more by exercising their legal rights in a public foreclosure or bankruptcy proceeding than by accepting the plan offered them, p. 100.

[October 17, 1939.]

APPLICATION *for approval of plan of refinancing certain outstanding bonds; granted.*

APPEARANCES: William M. Abbot and Chickering and Gregory, by Allen L. Chickering and M. L. Crimmins, for applicant.

By the COMMISSION: This is an application by Market Street Railway Company, a corporation, in which it asked:

1. That the Railroad Commission of the state of California set a day for a hearing upon the fairness of the terms and conditions proposed by the company and set forth in the documents annexed to the application as "Exhibit B," at which hearing all persons interested should have the right to appear; and

2. That after such hearing the Railroad Commission approve the plan set forth in such documents and the issue and exchange of bonds, as modified by the plan, for the outstanding bonds as they now exist, and the issue of new coupons on the bonds as extended, and approve the terms and conditions of the issue and exchange of deposit receipts for bonds; and

3. For such other and further relief as the Commission might deem just.

The Railroad Commission, on August 30, 1939, made its order assigning the application to Commissioner Devlin and setting it for a public hearing, to be held on his behalf, before examiner Fankhauser on Thursday, October 5, 1939, at 10 A. M. in the court room of the Commission in San Francisco. The order directed the company to publish a notice of said hearing once a week for at least three consecutive weeks in The Recorder, a newspaper of general circulation published in the city and county of San Francisco, and to mail a copy of said notice to all known holders of the company's outstanding bonds.

In accordance with the order the public hearing was held on October 5, 1939. At the hearing applicant filed an affidavit, by E. M. Massey, its secretary, showing that the notice of hearing was mailed to all known bondholders, and affidavit showing publication of the notice in The Recorder on the 6th, 13th, and 20th days of September, 1939. At said hearing all persons interested were accorded the opportunity to be heard.

Market Street Railway Company, as of April 1, 1924, executed a trust indenture and issued $13,000,000 of first mortgage 7 per cent bonds due April 1, 1940. (Decision No. 13130 dated February 11, 1924, in Application No. 9726.) The trust indenture securing the payment of said bonds provided, among other things, that the company, from January 1, 1925, to and including October 1, 1932, should pay into a sinking fund the sum of $125,000 on the first day of January, April, July, and October, being at the rate of $500,000 a year, and on said days of each of the years 1933 to 1939, both inclusive, and on January 1, 1940, the sum of $75,000, being at the rate of $300,000 a year. It was provided, further, that all sinking-fund moneys must be used to purchase the company's bonds and that all bonds so purchased with moneys paid into the sinking fund prior to January 1, 1933 should be kept alive until that date and then canceled, and that bonds purchased with moneys paid into the sinking fund on or subsequent to January 1, 1933, should be kept alive until payment or redemption of all the bonds. Moneys realized from the sale of mortgaged property were also paid into the sinking fund. Bonds acquired through the use of such moneys were canceled.

It appears that since the date of issue of the company's bonds it regularly paid interest thereon at the rate of 7 per cent per annum and made the quarterly sinking-fund payments required by the terms of its trust indenture up to and including April 1, 1938. However, it failed to make the sinking-fund payment due July 1, 1938, and it reports that it has since been unable to make any further payments into the sinking fund, although it has continued to meet the interest requirements on its outstanding bonds.

Of the $13,000,000 of bonds, the company reports that it owns and holds in its treasury $28,000 face value, that through the operation of the sinking fund it has reacquired and retired $5,901,500 face value, that $2,361,500 face value of bonds are now in the sinking fund, leaving total bonds outstanding, as of July 31, 1939, in

the amount of $4,709,000. The company reports that it has been unable to pay the interest on the bonds held alive in the sinking fund, that it will be unable to meet its sinking-fund requirements during the remaining life of the bonds and that it will be unable to retire the outstanding bonds at maturity.

Accordingly, in anticipation of the maturity of the bonds on April 1, 1940, the company has prepared for submission to its bondholders, a plan for modification of some of the terms of the bonds.

Under said plan, a copy of which is on file in this proceeding as Exhibit B, the maturity date of the company's bonds will be extended to April 1, 1945. The interest rate on the bonds beginning April 1, 1940, will be 5 per cent per annum instead of 7 per cent per annum. The sinking-fund provisions contained in § 29 of Art. 4 of the trust indenture will be eliminated and any existing default of the company thereunder, waived. In lieu thereof the company shall pay on the first days of January, April, July, and October in each year an amount equal to ½ of 1 per cent of the principal face amount of bonds outstanding on the day the plan becomes effective, to Ladenburg, Thalman & Co. or their successors, as fiscal agents, or to the trustee for their account as a sinking fund. The first payment into the sinking fund shall be made on July 1, 1940. The bonds now in the sinking fund shall be canceled. The provision of the trust indenture providing that bonds in the sinking fund are to be kept alive and interest paid thereon will be amended so as to apply only to bonds acquired by operation of the sinking fund provided in the plan

The company reserves the right to redeem all of the bonds, or any part thereof, on any interest payment date, at 100 per cent of the principal thereof, plus accrued interest.

The plan provides that it shall become effective when there are deposited in accordance with the plan, 95 per cent of the bonds outstanding or such lesser percentage as the company may elect and so advise each depositary, but in any event the percentage shall not be less than 85 per cent, without affording the depositor of bonds the privilege of withdrawal within twenty days, after notice with respect thereto, has been mailed in accordance with the provisions of the deposit receipt. Bonds must be deposited prior to December 15, 1939. The company, however, reserves the right to extend the time of deposit. It further reserves the right to modify the plan with the prior approval of the Railroad Commission.

To obtain the consent of the bondholders to the plan, the company has entered into an agreement (Exhibit 2) dated as of September 19, 1939, whereby Dean Witter & Co. and Ladenburg, Thalman & Co. will form a primary group to solicit the deposit of the bonds. Any investment banking concerns may solicit the deposit, such concerns to be classed as the secondary group. In the agreement the company agrees to pay to any member of the primary and secondary groups, a commission of $5 per $1,000 of bonds deposited, a further commission of $5 per $1,000 of bonds deposited with either of the two depositaries, that is, Wells Fargo Bank & Union Trust Co.

or The Chase National Bank, and, if the plan is declared operative, an additional commission of $5 per $1,000 of the bonds deposited with the depositaries at the time of such declaration. No commissions will be paid on approximately $1,750,000 of bonds deposited by (1) Wells Fargo Bank & Union Trust Co., its trusts and/or under its control, (2) The First National Bank of New York, (3) Ladenburg, Thalman & Co., (4) The Anglo-California National Bank and (5) Samuel Kahn and family and friends.

In addition to the outstanding bonds the company in its application reports other indebtedness including the following:

| *Notes Payable*<br>*Names of Payees* | *Due on or Before* | *Date of Interest* | *Face Amount* |
|---|---|---|---|
| To The J. G. Brill Company | Sept. 3, 1940 | 5% | $17,339.40 |
| Twin Coach Company | Nov. 15, 1942 | 6% | 7,600.00 |
| Twin Coach Company | Mar. 15, 1943 | 6% | 9,020.00 |
| Yellow Truck & Coach Mfg. Co. | Jun. 15, 1946 | 3½% | 84,992.00 |
| The Anglo-California Nat. Bank | Demand | 4% | 300,000.00 |
| *Accounts Payable* | | | |
| Standard Gas and Electric Co. | ———— | 6% | 919,136.34 |
| Pacific Gas and Electric Co. | ———— | 6% | 603,565.15 |

In the event the plan is consummated, the company covenants as additional security for the bondholders that no payments of principal shall be made on its existing indebtedness to Standard Gas & Electric Company until the bonds as extended have been paid in full, and also that no payments will be made on its existing bank loans until after the current sinking-fund requirements on the bonds have been met, and then only in an amount equal to 2 per cent of the principal amount of said bank loans annually, except as hereinafter provided. After meeting sinking-fund requirements, the company will also agree to use its remaining cash only for working capital or reasonable capital expenditures, and any amount over and above such reasonable requirements shall be used as additional sinking funds on bonds and existing bank loans pro rata to the principal amounts of each.

[1] It appears that it has not been the practice of the company to pay in cash the interest on the indebtedness to Standard Gas and Electric Company, but instead to accrue such interest and add it to the outstanding indebtedness. As of December 31, 1938 the applicant herein reported, in its 1938 annual report to this Commission, that Standard Gas and Electric Company held control over its affairs through ownership, indirectly of 39.67 per cent of its outstanding stock. It is noted in the plan now submitted here, applicant states that it will agree that no payment of principal shall be made on the indebtedness to Standard Gas and Electric Company existing on the effective date of the plan, until the bonds as extended shall have been paid in full. In our opinion the agreement should provide, in addition, that no payment be made of interest on the indebtedness to Standard Gas and Electric Company until the bonds shall have been paid in full, and that if any interest is accrued on said debt, it be at a rate of not more than 4 per cent per annum.

The company regularly has filed financial reports with the Railroad Commission. In addition, the Com-

mission recently has had occasion to inquire into the company's affairs, Decision No. 31472, dated November 23, 1938, in Application No. 21115 (41 Cal RCR 651) and it clearly appears that the company's earnings and financial condition have not been sufficient to enable it to meet all its requirements under its trust indenture and to provide for the payment of its remaining bonds on April 1, 1940.

[2] The order herein will approve the proposed refinancing plan. Such an order, of course, does not compel any holder of bonds to deposit them under the plan. It is for them to determine whether they can realize more by exercising their legal rights in a public foreclosure proceeding or bankruptcy proceeding than by accepting the plan now offered them. In our opinion the plan is fair to the bondholders. It imposes no expense on them. While it does provide for a reduction in the rate of interest paid, it should be remembered that from the time of issue of the bonds, in 1924, to the present, the holders of this company's bonds have enjoyed regular annual interest returns at the rate of 7 per cent per annum, and have seen the company reduce the total amount of bonds outstanding from $13,000,000 to $4,709,000. The same deed of trust that secures the bonds at present will remain intact, except for amendments to provide for changes in date of maturity, rate of interest and sinking fund, and will continue to secure the payment of the outstanding bonds as modified.

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*FEDERAL COMMUNICATIONS COMMISSION*

# Re Knickerbocker Broadcasting Company, Incorporated

[Docket No. 5771.]

***Radio, § 6 — Revocation of license — Interception of private messages.***

Interception and broadcasting, by a broadcasting company, of communications addressed to multiple addresses by foreign governments on the verge of war, although not requiring license revocation because of the attendant circumstances, cast grave doubt upon the licensee's qualifications to operate its station in a manner consistent with the public interest, and the records in the case must be of cumulative weight in determining the disposition to be made upon any future examination into the conduct of the station.

[October 25, 1939.]

INVESTIGATION *of alleged interception of private radio messages and their public broadcasting; record made for use in future proceedings.*

By the COMMISSION: The Commission began this proceeding by entering on its own motion an order dated September 12, 1939, directing Knickerbocker Broadcasting Company, Inc., licensee of Standard Broadcast Station WMCA, New York, N. Y., to show cause, on or before September 15, 1939, why the Commission should not, pursuant to § 312(a) of the Communications Act of 1934, as amended, revoke the license for Station WMCA for violations of the provisions of the act constituting conduct by the licensee contrary to the public interest. The particular question raised by the order was whether the licensee had caused the interception of secret radio communications sent by the governments of Germany and Great Britain, respectively, containing orders to naval vessels of those governments, in time of war or during a period of tense international relations, and thereafter had caused the messages or their substance to be broadcast over the facilities of the station, all without the authority of the senders of such communications.

Section 605 of the Communications Act of 1934 (47 USCA, § 605) provides that:

". . . no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person; and no person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by wire or radio and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto: *Provided*, that this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcast, or transmitted by amateurs or others for the use of the general public, or relating to ships in distress."

This is the mandate of the Congress, not a regulation of this Commission. It is equally applicable to radio operators, broadcasters, the press and the public in order to effectuate the congressional policy of protecting the privacy of communications. The right of free speech cannot be interpreted to include the right freely to publicize private communications. Moreover, the United States and the European nations, including Germany and Great Britain, have entered into treaty obligations to endeavor to avoid the publication of addressed communications handled over international communications systems.

In a full-page advertisement in the Radio Daily of September 6, 1939, Station WMCA, by adoption of the news items reproduced in the advertisement, made to the industry and to the public the following claims which if true were in the teeth of the statute:

Scoop!

*Said George Ross in The New York World-Telegram Thursday, August 31st:*

The Major Networks during the last two weeks have been envious of a smaller chain's scoops in the international situation. The lesser station that has carried sensationally exclusive news has been WMCA, which has not the extensive access to sources abroad as the large etherized networks. For example, WMCA flashed the British Admiralty orders and the secret German naval orders before these became public knowledge. And the story of these exclusives is this: Several weeks ago the station hired an expert of naval code who stationed himself near the short-wave receiver of a local morning newspaper. As secret orders from shore to ship were flashed from England and Germany he quickly decoded them and rushed his findings to the microphones! WMCA's rivals had been eager to know . . .

*And Ben Gross in the N. Y. Daily News*

. . . Johannes Steel, as usual, impressed with his inside knowledge of Germany, on WMCA. . . . The latter station also added to its record of sensational crisis scoops by airing an intercepted British Admiralty code message ordering the closing of the Mediterranean.

—*And we respectfully refer you to the front pages of the following New York newspapers that generously credited WMCA for important international news scoops:*

Daily Mirror .. August 28th and 30th
Journal-American ..... August 28th
Herald-Tribune ..... August 29th
Daily News ..... August 29th
New York Post ..... August 29th

WMCA

*Top of the Dial in New York*

If the conduct of the station had been in fact as described in the advertisement, the national public interest had been impaired at a critical moment in international affairs. An immediate order of revocation, which carries its own safeguards for the licensee, might well have been justified.

The Commission in this instance, however, did not issue such an order. It followed the more moderate course of issuing an order to show cause permitting and requiring the licensee to set forth in writing all the facts and circumstances regarding the alleged incidents, and to show cause why such an order revoking its license should not be issued.

Under the statute even an order of revocation cannot take effect in any event until after fifteen days from the date of issuance. The act provides further for a hearing *after* the issuance of the order of revocation upon application by the licensee made at any time within the 15-day period. The duty of the Commission to hold such a hearing then becomes mandatory. This would be true even where the Commission in its discretion grants what is in effect a preliminary hearing, as in this instance. The making of the application for the subsequent hearing further suspends the effective date of the order of revocation until the matter shall have been heard and thereafter determined. Meanwhile, the operations of the stations are permitted

to continue. Thus an order of revocation, when properly understood, is seen not to speak with the finality superficially indicated. This is the specific statutory process for raising the question of revocation and for hearing and disposing of the matter as provided by Congress.

On the day the show cause order was issued, William Weisman, the vice president and general counsel of the licensee, together with its counsel in the proceeding, called upon the counsel for the Commission for advice as to its response and were advised by Commission counsel to take the time necessary to set forth, not mere conclusions, but rather the full facts and circumstances in question. On the following day, and two days prior to the required date, there was filed with the Commission a document legalistic in form, sworn to by Weisman. Facts later developed show that he had taken no part in the incidents in question. Failing to constitute a general denial, as it superficially purported to be, this document evaded the factual issues and utterly failed to comply with the show cause order of the Commission for a statement of the facts and circumstances. The evidence at the hearing shows that the affiant filed his purported "response" without discussing the matter in question with the executive who handled the activities in question. The statements of fact set forth in the advertisement were merely given an oblique reference. By this conduct the station neither recognized nor discharged any duty to the Commission in the conduct of the inquiry.

At this state the Commission felt compelled itself to make a more thorough-going inquiry into the facts. This accomplished, the matter was set down for public hearing to give a further and full opportunity for an authoritative presentation of the facts prior to any further action by the Commission.

A full hearing was had. While the Commission declined to permit prepared statements to be read into the record, all exhibits offered in evidence were received, and the Commission heard all witnesses presented by Commission counsel and counsel for the broadcaster, and these were exhaustively examined and cross-examined upon all pertinent facts. The facts as thus established, and here found by the Commission, are at variance from those set out in the advertisement of the station as well as from the conclusions set forth in its written response. In the light of all the evidence there is, however, no reasonable basis for conflicting views as to the controlling facts.

At a time when Europe was on the verge of war, the operator of the short-wave receiver of the New York Herald-Tribune on the night of August 27, 1939, was tuned in on the broadcast of the German government-owned and operated Station DLE, which was then being operated in Morse Code in the English language. This station the operator understood to be a "fixed" station, or one designed for customary use in point-to-point communication. Its listing in the Bern registry is that of a fixed station, located at Rehmate, Germany. At the time it was transmitting news on a "CQ" or "to all stations" basis, such

news being "intended to be read or used by anyone who can receive it." * However, this "CQ" news message was interrupted, and in Morse, but not secret code there was transmitted the following not in English but in the German language; "An alle Deutschen schiffe," which translated means "to all German ships"; shortly followed the sentence: "Nach Sonderanweisung Handeln," "Act on your special secret instructions."

Station WMCA had no short-wave receiver and, contrary to the advertisement, had engaged neither radio telegraph operator nor a code expert. It did have contracts with this and another newspaper for press service. Upon the receipt of the foregoing special message the operator promptly telephoned from the newspaper office to an executive of the broadcaster and informed him of the interruption of the English language press transmission and of the transmission and his interception of the foregoing message in German to all German ships. The broadcast station translated the message into English. It thereupon interrupted its own current domestic broadcast and made the following announcement:

(—— Voice interrupting.)

"We are speaking to you from the WMCA news room. We bring you this important bulletin. The official government German short-wave station reported tonight that a message was addressed to all German ships at sea consisting of three short German words, which translated means: Act on your special secret instructions.

"The New York Herald-Tribune wireless received this message from Berlin about fifteen minutes ago. It came through while the Berlin station was reporting Hitler's reply to French Premier Daladier. The exact import of the message is not known. We shall report further as soon as we get any word of its significance."

Again, on the night of August 29th the newspaper's short-wave operator, under circumstances very similar, made a like interception of the British Admiralty's orders in Morse Code to all British merchant ships containing detailed instructions to the different groups of vessels to proceed immediately to specified British ports and to follow other orders contained in the message. Again the station interrupted its current broadcast program and informed its radio audience of the orders.

A week later the station published the full-page advertisement above quoted. Various press items concerning the news coverage of the station had been collected. The two items included in the advertisement had been carefully selected for that purpose (although it was admitted at the hearing that at least one of those actually used was known to be false at the time of publication). At least one of the two items quoted in the advertisement (that having to do with the British Admiralty orders) had been inspired by the station itself substantially as quoted. It was, in fact, substantially true. So testified one of the station's executives.

That the broadcasting of the substance of the messages described runs counter to the provisions of § 605 of the Communications Act admits of little doubt. The evidence in this case

* General Radio Regulations, Cairo Revision, Art. 18, par. 4.

shows conclusively that the messages in question were important orders of the governments of Germany and Great Britain, respectively; that they were to govern important ship movements in anticipation of, and perhaps during, war; that they were addressed communications, albeit to multiple addressees; that they were intercepted without the authority of the senders; and that WMCA knowing that the messages had been obtained by means of interception, broadcast the substance thereof from its station. This conduct of the station must be viewed in the light of the great international stress then prevailing and of the special duty of American broadcasters, who are licensed for the purpose of serving the public interest, to conduct their operations with a corresponding degree of care.

While, as has already been pointed out, the specific statutory prohibition now before us applies generally, a violation of it by a holder of a radio broadcast license must command our special attention. Especially is this true since there threads throughout the statute both generally and specifically the notion that broadcasters perforce of law undertake to serve the public interest. The legal concept of public interest is not different in time of crisis although its factual content may vary from time to time as the public necessarily and properly shifts the emphasis of its concern from one predominant fact to another.

Apart from the broadcasts of the station and the inadequate response to the Commission's order to show cause, the irresponsible actions of the licensee in connection with the full-page advertisement quoted above warrant comment. Regardless of the legality of such advertising as a trade practice it raises a question as to the character and responsibility of the management in the light of its obligation to operate the station in the public interest. More than honesty is at stake. The advertisement creates the possibility that competing broadcast stations will be drawn toward the same line of illegal broadcast activity boasted by this station. The president of the licensee corporation, Donald Flamm, admitted that the statements the station quoted from the George Ross column were false and that although he examined the "layout" of the advertisement, neither he nor anyone else in his organization made any investigation or gave consideration to the question as to truth of the representations. When asked what disciplinary action had been taken in this connection, Flamm replied merely that he had given directions that all future advertisements were to be submitted to the attorney for the station.

By their conduct throughout this chain of events—the broadcast, the advertisement to the industry, the evasive written response to the Commission's order, the uncandid character of their oral testimony—Flamm and his coexecutives managed to create a question as to their possessing any substantial sense of responsibility to the public or the ability to recognize even roughly the public interest properly involved in the operation of a broadcast station. Just as it may be a powerful instrumentality for public good, so a broadcast station has potentialities of causing great public harm, and it is accordingly imperative that the limited broadcast channels belong-

ing to the public should be entrusted to those who have a sense of public responsibility.

On behalf of the licensee it is recognized that the broadcasts in question occurred during a period of unusual activity in the gathering and dissemination of news of special interest to the public. Speed in transmitting through the air news flashes bearing on the European crisis was assumed to be of the essence of this and other stations' service. The same international stress which made the conduct grave created the urge to scoop the other stations. As was recognized broadly new and important problems in connection with radio broadcasting arose from the war crisis. Under these circumstances the Commission will assume that these particular broadcasts were provoked by the occasion and are not necessarily indicative of more widespread infractions in the course of this station's broadcast activities.

After consideration of the record and all the attendant circumstances in this matter, the Commission is of the opinion that an order of revocation need not be entered at this time. On the whole, however, grave doubt has been cast upon the licensee's qualifications to operate its station in a manner consistent with the public interest. Accordingly, the record made in the different phases of this proceeding must be of cumulative weight in determining the disposition to be made upon any future examination into the conduct of this station.

It is so *ordered.*

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*PENNSYLVANIA PUBLIC UTILITY COMMISSION*

# Pennsylvania Public Utility Commission

*v.*

# Clark's Ferry Bridge Company

[Complaint Docket No. 11352.]

*Return, § 20 — Amount.*

1. The proper rate of return to be allowed on the fair value of a public utility varies not only according to the type of utility involved, but also for particular utilities within a group, depending on the circumstances in each particular case, p. 109.

*Return, § 24 — Factors considered — Competition for capital funds.*

2. The crux of the problem of determining a proper rate of return for a particular utility is the practical consideration of how it will be able to compete with others, utilities as well as nonutilities, for capital funds, p. 110.

*Return, § 85 — Bridges — Factors considered.*

3. Consideration of the actual situation of toll bridges in the vicinity of the one in question is more helpful and significant than any theoretical study

of toll bridges throughout the country in determining a fair rate of return for a certain toll bridge, p. 112.

*Return, § 85 — Bridges — Reasonableness.*

4. A return of 6 per cent on the fair value of a toll bridge company's property was deemed proper and reasonable, p. 113.

[November 14, 1939.]

INQUIRY *and investigation on Commission's motion to determine rate of return to which toll bridge company is entitled; return determined and tariff revised accordingly.*

By the COMMISSION: This inquiry and investigation was instituted on March 8, 1937, on motion of the Public Service Commission, "for the purpose of determining the present fair value of the property of Clark's Ferry Bridge Company used and useful in the public service, and the rate of return to which the respondent company is entitled." At the first hearing, Commission counsel stated that "The Commission proposes to limit this case to the fair rate of return portion of the inquiry unless the company proposes to offer evidence relating to the value of the property." Respondent's counsel stated that no evidence relating to value would be submitted by respondent, and the proceeding has been limited to the question of rate of return.

The most recent adjudication of the rates of respondent was made by the Commission in its order dated March 8, 1937, 16 Pa PSC 399, 18 PUR(NS) 357. In this order, the fair value of the property was reëstablished at $767,800, upon which a 7 per cent rate of return, or $53,746, was allowed; operating expenses were allowed in the sum of $18,012; taxes were allowed in the sum of $9,608; annual depreciation was allowed in the sum of $7,678; and amortization of bond discount was allowed in the sum of $1,331. Respondent was therefore ordered to file rates calculated to produce revenues not in excess of $90,375 annually. The figure of $767,800 is the fair value previously fixed by the Commission, 11 Pa PSC 222, PUR1932C 295, and affirmed by the superior court of Pennsylvania, 108 Pa Super Ct 49, PUR1933D, 173, 165 Atl 261, and the United States Supreme Court, 291 US 227, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 427, both courts rejecting respondent's claims for a higher rate base and a higher rate of return.

Respondent challenged the authority of the Commission to make the order of March 8, 1937, *supra*, and appealed to the superior court of Pennsylvania. This challenge was based on the facts that the commonwealth of Pennsylvania undertook to take over respondent's bridge property by eminent domain, and that the commonwealth had been prevented only by a preliminary injunction from retaining possession of the bridge and collecting tolls. The superior court affirmed the Commission by opinion dated December 17, 1937, Clark's Ferry Bridge Co. v. Public Utility Commission, 129 Pa Super Ct 425, 195 Atl 639.

Respondent's bridge crosses the

Susquehanna river at a point known as Clark's Ferry, Dauphin county. It is approximately 15 miles north of Harrisburg, and 40 miles south of Sunbury, at which points other highway toll bridges are located. No other highway bridges cross the Susquehanna river within this distance of 55 miles. The present concrete 2-lane structure was built in 1925, replacing a wooden bridge which previously rendered service in the same location. The bridge is part of U. S. Highway Route No. 11, which carries traffic running north and south, and U. S. Highway Route No. 22 (William Penn Highway), which carries traffic east and west. These two highway routes are important main trunk highways and are very heavily traveled. Respondent has at all times, before this Commission and in the courts, emphasized the unique and extraordinary value of the location of its bridge.

The traffic on the bridge has consistently increased in nearly every year, the record showing that approximately twice the number of vehicles crossed the bridge in 1936 as in 1927. Respondent in its brief makes much of the fact that owing to the opening of a new highway on the west shore of the Susquehanna river during the spring of 1938, traffic in 1938 declined, as compared with the year 1937. An attempt is made to express this loss of traffic by definite figures, purportedly developed from monthly statements filed by respondent with the Commission. An examination of these monthly statements, however, indicates that the traffic volume in 1938 did not decline to the extent set forth. The 1938 annual report filed with the Commission shows that operating revenues amounted to $116,313, or $25,938 in excess of the annual revenues of $90,375 allowed in our order of March 8, 1937, *supra.*

Moreover, the effect of the new highway on the west shore of the Susquehanna river will be at least offset by the fact that at the present time the state highway department is making extensive improvements to the highway on the east shore of the river, to relieve a certain amount of congestion now present. Completion of the east shore improvements may reasonably be expected to cause traffic over the bridge to return to or exceed the 1937 level. It should also be noted that respondent has a rate which is substantially lower for the traveling public than the rates charged by the two bridges located in Harrisburg; and, as found in this order, further reductions should be made in the rates, which will result in increasing the differential between the rates at Clark's Ferry and at Harrisburg, thus stimulating the use of respondent's bridge as against the Harrisburg bridges.

The principal risk to which river bridges appear to be subjected is the possibility of damage caused by flood. The record contains evidence regarding the flood of March, 1936, at which time the water reached the highest level in a period of forty years prior thereto. The bridge could not be used for a period of about three weeks due to the fact that the highway above the bridge was washed out. The evidence does not indicate the extent to which the bridge may have been damaged because of the flood. Respondent's expert gave testimony on this subject as follows:

*Q.* Now, you spoke of flood haz-

ards in connection with the Clark's Ferry Bridge Company. Did you make any study of the experience of the company with reference to flood conditions?

*A.* No.

*Q.* Then your testimony as to flood hazards is general in character and you did not base it on any definite information regarding this bridge?

*A.* Nothing but general knowledge from living along the river. I know what occurs in the spring.

From a financial standpoint, respondent has been very successful. We need only point to its history in connection with the issuance of $450,000 of 30-year bonds which were sold to the public in 1929. Between 1929 and 1938 respondent reduced this indebtedness by approximately two-thirds. The annual report for the year ended December 31, 1939, shows that bonds outstanding amounted to $325,000, against which sinking-fund assets were available for redemption of the bonds in the amount of $172,964, leaving a net obligation of approximately $152,000. According to information received from respondent on May 25, 1937, the amount of bonds outstanding was actually $200,000 on May 21, 1937. During the same period, respondent consistently paid 7 per cent dividends on $175,000 of preferred stock, and paid substantial dividends on its common stock. This financial success can be attributed partly to the fact that the bridge is a very important part of the state highway system with an attendant heavy volume of traffic, and to the further fact that the numerous substantial rate reductions ordered by the Commission and sustained by the appellate courts have increased the volume of traffic from local patrons.

[1] The determination of the proper rate of return to be allowed on the fair value of a public utility varies not only according to the type of utility involved, but also for particular companies within a group. In addition, the time when the determination is made is very important. The proper rate of return depends entirely on the circumstances in each particular case. This was recently stated in Pennsylvania Power & Light Co. v. Public Service Commission (1937) 128 Pa Super Ct 195, 212, 19 PUR (NS) 433, 444, 193 Atl 427, where Judge Parker quoted from Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 692, 67 L ed 1176, PUR 1923D, 11, 20, 43 S Ct 675, as follows:

" 'What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be

adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.' "

This view, together with a restatement of the factors to be considered in determining rate of return, was reiterated even more recently by the United States Supreme Court in Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR (NS) 65, 74, 59 S Ct 715, where Mr. Justice Reed, speaking for a unanimous court, said:

"The rate of return was fixed by the Commission at 6 per cent. Witnesses for the utility brought out facts deemed applicable in the determination of a proper rate of return on the fair value of the property. Their evidence took cognizance of the yield of bonds, preferred and common stocks of selected comparable utilities, the stagnant market for new issues, prevailing cost of money, the implications of the possible substitution of some governmentally operated or financed utilities for those privately owned and the dangers of a fixed schedule of rates in the face of possible inflation. From these factors they deduced that a proper rate of return would be from 7.8 per cent to 8 per cent. An accounting expert of the Commission countered with tables showing yields of bonds of utilities; the yield to maturity of Pennsylvania public utility securities, approved by the Commission between July 1, 1933, and May 7, 1937, long term and actually sold for cash to nonaffiliated interests; yield of Pennsylvania electric utilities; financial and operating statistics of Pennsylvania electric utilities; money rates, and other material information. He concluded 5.5 per cent was a reasonable rate of return.

"It must be recognized that each utility presents an individual problem. The answer does not lie alone in average yields of seemingly comparable securities or even in deductions drawn from recent sales of issues authorized by this same Commission. Yields of preferred and common stocks are to be considered, as well as those of the funded debt. When bonds and preferred stocks of well-seasoned companies can be floated at low rates, the allowance of an over all rate return of a modest percentage will bring handsome yields to the common stock. Certainly the yields of the equity issues must be larger than that for the underlying securities. In this instance, the utility operates in a stable community, accustomed to the use of electricity and close to the capital markets, with funds readily available for secure investment. Long operation and adequate records make forecasts of net operating revenues fairly certain. Under such circumstances a 6 per cent return after all allowable charges cannot be confiscatory."

[2] In order to consider the various factors stated by the courts as relevant in determining rate of return, the Commission submitted evidence through Roger A. McShea, Jr., a supervising accountant of very considerable experience, both in public accounting, and in work for the Commission's bureau of accounts. The

Commission's evidence, in the form of exhibits and explanations by oral testimony, as well as direct testimony, consists of studies of bond yields, including industrial, railroad, public utility, municipal, and United States government, covering a period of years; yields to maturity of securities approved by the Commission subsequent to July 1, 1933; New York money rates subsequent to January 1, 1932; the relationship of earnings to market prices on common stocks of 574 corporations; earnings available for interest and dividends on securities of Clark's Ferry Bridge Company, assuming (a) total capitalization at fair value of bridge ($767,800), (b) various over all rates of return thereon, and (c) various interests and dividend rates; interest rates paid by banks on savings accounts in Harrisburg for the 10-year period ending in 1937; the past and present capitalization of Clark's Ferry Bridge Company, and the extent to which bonds of the company have been liquidated; traffic statistics, covering a 10-year period ending in 1937; the effect of a flood in March, 1936; the business of respondent; the character, type, and location of the bridge; the June 8, 1926, report and order of the Commission at Herring v. Clark's Ferry Bridge Co. 8 Pa PSC 61, PUR1926D 514, the annual reports filed by respondent with the Commission from 1925 to 1937, inclusive; and certificates of notification filed with the Commission pertaining to the issuance of respondent's bonds.

We deem this evidence pertinent and useful, since the crux of the problem of determining proper rate of return is the practical consideration of how the particular utility will be able to compete with others, utilities as well as nonutilities, for capital funds. In order to determine whether the rate of return for respondent will be sufficient to attract investors in the first place, and permit the company to secure additional funds when needed, it is necessary to consider what return investors are receiving, and can be expected to receive, on investments elsewhere.

Commission Exhibit No. 1, which is a survey of bond yields, issued by the United States Department of Commerce, indicates that through 1932, 1933, 1934, 1935, and 1936, the trend in bond yields was consistently downward. This trend conforms to facts so common that the Commission could well take judicial notice of them. We refer to the so-called "cheap money" market prevalent during the depression and continuing today. Thus, in February, 1932, when the Commission fixed the fair value of respondent's property, the average yield for a public utility issue was 5.49 per cent. Excepting a slight rise in January, 1934, this figure dropped steadily until in January, 1937, it was 4.02 per cent. A similar decline occurred in the yields of securities of other types of companies.

Commission Exhibit No. 2 is especially relevant, since it shows the yields to maturity of security issues approved by the Commission between July 1, 1933, to May 7, 1937, where the issues were for a term of ten years or more, for a fixed return in dollars, were of a type generally marketable, and were actually sold for cash, to nonaffiliated interests. This exhibit not only shows that the yield to ma-

turity dropped from 6 per cent in 1933 to 4 per cent in 1937, but that the drop was so consistent (excepting again for a short period in 1934) that we can only conclude that a definite downward trend existed at least for the 4-year period. Naturally, there are exceptions in the case of a few companies, but it is notable that after 1934 the yields on issues of only five companies were 5 per cent or more. This, in our opinion, indicates a definite trend, and it is downward. It is common knowledge, as stated above, that this downward trend has continued until the present time.

[3] Respondent's evidence consisted chiefly in the testimony of Blair F. Claybaugh, whose acquaintance with securities began in September, 1929, when he became a salesman for a securities firm. Since 1932 Mr. Claybaugh has conducted his own investment business in Harrisburg. He presented an exhibit and testified generally to the effect that the funded debt of toll bridge companies is not considered a prime investment. This testimony was entirely general. We have already pointed out that the courts have consistently required the consideration of the particular circumstances in each case. The situation of respondent, and indeed the other Susquehanna river bridges, is peculiar and different. The Susquehanna river cuts the entire state of Pennsylvania in two. The large volume of traffic through Pennsylvania has made the Susquehanna river bridges, particularly those in Harrisburg and vicinity, highly profitable. Consideration of the actual situation of identical utilities, in the vicinity of respondent, is far more helpful and significant than any theoretical study of toll bridges throughout the entire country, or even over the whole state.

The records of the Commission, and the testimony in this case, covering not only respondent but the Harrisburg Bridge Company and the Peoples Bridge Company of Harrisburg, disclose that their funded debt (most of which has already been retired out of earnings) has been secure in the highest degree. In addition, all three of these companies pay handsome dividends on their common stocks. In 1937 Harrisburg Bridge Company paid 22.5 per cent, the Peoples Bridge Company of Harrisburg paid 36 per cent, and respondent itself paid 15 per cent. Mr. Claybaugh's testimony was very deficient, with respect to the earnings of these companies or other companies. He admitted having no knowledge of the return on the common stocks of the Harrisburg bridge companies, and even of respondent's earnings on its common and preferred stocks. His testimony was as follows:

*Q.* Clark's Ferry Bridge Company has never defaulted on its bonds?

*A.* Not to the best of my knowledge.

*Q.* And it has always paid its preferred stock dividend, has it not?

*A.* I can't answer that.

*Q.* You don't know of any failure to pay the dividend on the preferred stock?

*A.* I have not made a study of the preferred stock.

*Q.* Did you make any study of the average dividend rate on the common stock?

*A.* No, sir.

*Q.* For any period?

*A.* For Clark's Ferry Bridge Company?

*Q.* That is correct.

*A.* No, sir.

*Q.* Do you know what the dividend rate was on the common stock for the year 1937?

*A.* No, sir.

Mr. Claybaugh frankly stated that his study "deals principally with original first mortgage bond issues, which were sold to the public and omits in most cases the equity financing such as second liens, preferred and common stocks." In view of the statement of Mr. Justice Reed, quoted above, that "yields of preferred and common stocks are to be considered as well as those of the funded debt," the worth of Mr. Blair Claybaugh's testimony is open to serious doubt.

[4] It appears from the record that the average yield on the securities of public utilities and other corporations has been consistently downward during the past several years. Further, the experience of respondent shows its bridge to be a venture so profitable that, in a comparatively short space of time, it has repaid most of its funded debt, and has consistently earned dividends on its equity stocks. Under these circumstances, it is our judgment that a return of 6 per cent on the fair value of respondent's property is entirely proper and reasonable. We base this conclusion on all the evidence in the case, which we have examined carefully.

Since the annual operating revenues heretofore allowed in the amount of $90,375, were predicated upon a rate of return of 7 per cent, it is necessary, in view of our finding that 6 per cent is a fair and reasonable rate of return, to revise our allowance for annual gross operating revenues. This will be accomplished by subtracting from the figure of $90,375, the sum of $7,678, which leaves an allowable operating revenue of $82,697. The subtraction of $7,678 represents 1 per cent on the fair value of the property fixed in the amount of $767,800.

We state below a tariff for respondent which will provide annual operating revenues in an amount substantially below the actual revenues in recent years. We have designed this tariff with a view to providing additional incentive for the present regular patrons of the bridge and for other patrons who might be induced to become regular patrons by reason of a lower schedule of rates than is now available. We have retained the 5-cent rate for a single passenger car crossing and, in addition, have provided a 10-cent ticket rate permitting five crossings and a monthly rate of 50 cents for an unlimited number of crossings. Reductions have also been provided for trucks, busses, and other types of traffic.

*NEW YORK COURT OF APPEALS*

# New York State Electric & Gas Corporation

*v.*

# City of Plattsburg et al.

(— NY —, 24 NE(2d) 122.)

*Municipal plants, § 24.1 — Revenue bonds — Debt limit.*

1. Revenue bonds sold to the Federal government by a municipality pursuant to the General Municipal Law, to finance the improvement of a sewer system and to be paid wholly from the revenue to be received from the system, do not constitute an indebtedness of the city and should not be included in computing the total amount which the municipality can lawfully contract as indebtedness under the state Constitution, p. 116.

*Municipal plants § 24.1 — Bond issue — Debt limit.*

2. Bonds to be issued by a municipality to finance the construction of a power plant constitute an indebtedness of the city, and must be included in ascertaining the total amount of indebtedness which the city may lawfully contract under the provisions of the Constitution, where such bonds are to be paid from the general taxes levied upon all the taxable property within the city, p. 116.

[November 21, 1939.]

APPEALS *by plaintiff and defendant from judgment of appellate division modifying trial court judgment in suit to restrain city from issuing and selling bonds for the construction of a municipal electric plant; judgment of appellate division modified and affirmed as modified. For decision by the appellate division, see 256 App Div 732, 12 NY Supp(2d) 318; for decision by Supreme Court, trial term, see 168 Misc 597, 6 NY Supp(2d)419.*

APPEARANCES: Wallace E. Pierce, of Plattsburg, for plaintiff, appellant and respondent; Henry P. Kehoe, Corporation Counsel, of Plattsburg, for defendants, respondents and appellants.

HUBBS, J.: The defendant city of Plattsburg desiring to avail itself of the opportunity of securing funds from the Federal government, in March, 1936, started proceedings to authorize the construction of a municipal electric power plant. The common council adopted a local law authorizing its construction. On May

15, 1936, the local law was approved by the electors of the city at a special election. The proceedings were strictly in accordance with the provisions of Art. 14-A, § 360 et seq., of the General Municipal Law (Consol. Laws, Chap. 24). The local law fixed the estimated cost at $520,000, and the maximum cost at not to exceed $594,000. It provided a plan for financing the project by means of a grant from the Federal Emergency Administration of Public Works of $234,000, being 45 per cent of the estimated cost of $520,000, the balance of 55 per cent of $520,000, the estimated cost, to be raised by the sale of bonds in the amount of $286,000.

The local law provided that the project should be constructed substantially in accordance with plans approved by the common council and on file and subject to inspection It also provided that the common council should pass the necessary resolutions to authorize the issuance, sale, and execution of the bonds, which should constitute a general obligation of the city. In short, the city took the necessary legal proceedings. The city has not advertised for bids for the construction of the project, made any contracts therefor or sold any of the bonds.

This action, brought by the plaintiff company, is to restrain the city from issuing and selling the bonds. The trial court decided in favor of the plaintiff and enjoined the city from proceeding with the undertaking. The appellate division modified the judgment of the trial court and decided that the city might proceed with the project, but directed that it could not issue bonds for an amount in excess of $82,320.54, plus $24,000, if and when outstanding bonds in that amount are retired in accordance with provisions already made therefor.

The trial court found that the issue of bonds to the amount of $286,000, the amount necessary under the estimated minimum cost of construction, would result in an indebtedness of the city in excess of 10 per cent of the assessed valuation of its real property and, therefore, that the proposed bond issue was in violation of Art. VIII, § 10, of the state Constitution as it existed in 1938 (now Art. 8, § 4).

The appellate division reached the conclusion that the city still possessed borrowing capacity of $82,320.54 plus $24,000 if and when outstanding bonds to that amount have been paid in accordance with provisions already made therefor. It, therefore, decided that the city might proceed with the project but that it could not issue bonds therefor in a greater amount than stated. It reached such decision upon the ground that the city could not be restrained until it had exhausted its borrowing power or entered upon contracts which disclosed that it had contracted beyond its borrowing power.

If we assume that the appellate division was right in holding that the sewer bonds hereafter referred to constituted an indebtedness and that the city possessed capacity to borrow only $82,320.54, we might not be willing to agree with the statement that as a matter of law this action was prematurely brought.

If, on the other hand, the city possessed borrowing capacity of $269,000 over and above its present indebtedness, an entirely different factual situation would be presented. In determining the amount of the city's borrowing capacity over its present indebtedness it is necessary to decide whether certain sewer bonds to the amount of $187,000 constitute an indebtedness of the city.

In 1938 the city, acting under the provisions of the General Municipal Law, Art. 14-C, § 400 et seq., sold to the Federal government sanitary sewer revenue bonds to the amount of $187,000. The city had a sewer system which was used without charge by property owners. Desiring to extend and improve its sewer system it procured from the Federal government a gift and issued and delivered to the Federal government for additional funds advanced, the sewer bonds in question. The bonds provided that they should be paid wholly from the revenue received thereafter from the sewer system.

[1] It is conceded that all proceedings growing out of the issuance of those bonds and the construction of the sewerage system were in strict accordance with law. It is urged by the plaintiff, however, that the bonds constitute an indebtedness of the city and should be included with all other conceded indebtedness of the city in computing the total amount which the city can lawfully contract as indebtedness under § 10, Art. VIII of the state Constitution as it existed in 1938 when those bonds were purchased by the Federal government. That question has been definitely settled by this court contrary to the contention of plaintiff. Section 10, Art. VIII of the state Constitution provides that no city shall be allowed to become indebted to an amount which shall exceed 10 per cent of the assessed valuation of the real property of such city subject to taxation. The question here involved arose in the case of Robertson v. Zimmermann (1935) 268 NY 52, 196 NE 740, and we decided that bonds issued by "Buffalo Sewer Authority" in accordance with the provisions of a statute similar to those of the General Municipal Law did not constitute an indebtedness of the city of Buffalo and should not be included with the other indebtedness of the city in computing and fixing the 10 per cent over which the city could not lawfully become indebted under § 10, Art. VIII of the Constitution. The facts in that case and in the one at bar differ in minor respects, but the fundamental principles established by the decision in that case are controlling in this. Rochester v. Union Free School District of Livonia (1938) 255 App Div 96, 5 NY Supp(2d) 747, affirmed (1939) 280 NY 531, 19 NE (2d) 928.

[2] An entirely different situation exists in relation to the proposed issue of bonds to the amount of $286,000, the proceeds from which are to be used in constructing the proposed new electric system. Those bonds are to be paid, not solely from the revenue to be derived from the electric system, but from the general taxes levied upon all the taxable property within the city. They will, therefore, constitute an indebtedness of the city and must be included in ascertaining the total

amount of indebtedness which the city may lawfully contract under the provisions of the Constitution. When so considered, after excluding the sewer bonds amounting to $187,000, it appears that the city has a leeway of $269,000 before reaching the debt limit. The proposed issue of bonds for the electric system for $286,000 is, therefore, only $17,000 more than the present debt limit of the city. The estimated cost of the proposed electric system to be constructed in substantial compliance with the plans on file is $520,000. It may appear later that the system may be constructed in substantial compliance with such plans for at least $17,000 less than the estimated costs. If so, the bonds required to be issued would not exceed the city debt limit. Or it may happen that prior to the time for issuing the bonds the debt limit of the city may have in some way been increased.

The judgment of the appellate division should be modified by providing that the present debt limit of the city is $269,000 instead of $82,320.54 and as so modified affirmed, without costs.

Crane, C. J., and Lehman, Loughran, Finch, and Rippey, JJ., concur.

O'Brien, J., taking no part.

Judgment accordingly.

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*MISSOURI PUBLIC SERVICE COMMISSION*

# Raytown Water Company

*v.*

# Independence Waterworks Company

[Case No. 9316.]

*Monopoly and competition, § 39 — Service across boundary — Water.*

Customers who can secure water service at a lower relative cost from the utility authorized to serve the adjoining territory than from the utility serving the territory wherein they reside should be permitted to do so until the territory in which the customers reside is developed to the extent that satisfactory service can be rendered by the utility authorized to serve them.

[December 30, 1939.]

COMPLAINT *of water company that another water company is unlawfully serving the area which it is authorized to serve; rule set out in accordance with opinion and territory outlined.*

By the COMMISSION: By its order entered herein on the 5th day of June, 1937, supplemental to its report and order issued on the 3rd day of June, 1937, the Commission fixed a dividing line between the Independence Water Works Company and the Raytown Water Company by the following description:

"Beginning at the east city limits of the city of Kansas City approximately midway between Leeds road and Raytown road and extending eastwardly somewhat midway between the two to County Highway 4E, thence to a point ¼ mile north of the southeast corner of section 20, township 49 E, range 32 W, thence eastwardly in a direct line to the southeast corner of section 21, township 49, range 32, thence southeastwardly parallel to U. S. Highway 40 to the east line of section 27, thence south along said section line to a point directly west of the Jackson County Home, terminating at the southwest corner of section 14, township 49, range 32, in Jackson county, Missouri."

Of recent date the Raytown Water Company has complained informally that the Independence Water Works Company has been violating the order of the Commission by furnishing water service to customers whose premises are located in the territory assigned to it, the Raytown Company. The parties appeared informally on December 19, 1939, before this Commission for a conference. At that conference the following stipulation was entered into by the two water companies:

"This is a conference wherein the Raytown Water Company appears by its president, Dr. Samuel J. T. Davis, counsel for the Raytown Water Company, Mr. Carson Cowherd, engineer, Mr. Sidney Davis of the Raytown Water Company, Mr. N. A. Gallagher as manager of the Independence Waterworks Company and Harvey Burrus, attorney, and Mr. Alonzo H. Gentry, appearing for the reason that his property is the subject of controversy.

"It is stipulated and agreed between the companies and the respective counsel that the description set out in the supplemental report and order purporting to define the boundaries between these two companies as made by the Commission on June 5, 1937, in Case 9316 may be interpreted by the Commission and the legal description of a dividing line between the Raytown Water Company and Independence Waterworks Company, as set out in that order, may be interpreted and fixed by the Commission and set out on a map described as a general highway and transportation map of Jackson county, Missouri, and identified by the initials of the Independence Waterworks Company and Raytown Water Company thereon. When so interpreted by the Commission a copy shall be furnished to both the Raytown Water Company and the Independence Waterworks Company.

"Dated at Jefferson City this 19th day of December, 1939."

In order that the parties may be better informed the Commission has had the dividing line between the two companies delineated on a map of Jackson county by one of its engineers

and the description of the line more fully placed upon the map as he has drawn the line thereon. The description of the line as so drawn reads as follows:

"Beginning at a point on the east line of the city limits of Kansas City 1,245 feet north of intersection of the east city limits of the city of Kansas City with the center line of U. S. Highway 40 in section 19, township 49 north, range 32 west, and extending in a straight line to a point on the center line of County Highway 4E, 397 feet north of the south line of section 20; thence in a direct line to a point on the east line of section 20 1,320 feet north of the southeast corner of said section 20, township 49 north, range 32 west; thence east by south in a direct line to the southeast corner of section 21, township 49 north, range 32 west, thence in a southeastwardly direction, parallel to U. S. Highway T. R. 40 to the east line of section 27, township 49 north, range 32 west, thence south along said section line to a point directly west of the Jackson County Home, terminating at the southwest corner of section 14, township 49 north, range 32 west, in Jackson county, Missouri."

The conference also brought out the problem that has arisen from time to time and may again present itself in the future. That problem is the cause of the complaint that is now before the Commission. Namely, that there are prospective customers located near the dividing line who may be unable to secure water from the company in whose territory his premises happens to be located, but for whom water service is available from the company serving the area just across the dividing line.

The incident before the Commission in the conference was that a Mr. Gentry was able to construct a water line of his own across his own property a short distance, thereby securing service from the Independence Waterworks Company. The water from the Raytown Water Company was approximately one-half mile away. He installed a water line from his premises into the area of the Independence Waterworks Company and is receiving water from that company.

The Commission is of the opinion that it should determine the procedure that the two companies should follow under such conditions. Its opinion is that customers should be permitted to secure the water service from the utility in the opposite territory from where it can be secured at a lower relative cost with the understanding that the service should continue to be rendered by the utility in the opposite territory until the territory in which the customer or prospective customer is located is developed to the extent that the service can be rendered under proper conditions by the company in which he is located.

The utility in which the customer is located may then render the service after the utility has made the necessary connection between the customer's premises and its water system at no cost to the customer. On this information, the Commission finds that it should rule further upon the questions in controversy.

It is, therefore,

*Ordered:* 1. That the dividing line between the Raytown Water Company and the Independence Waterworks Company be further interpreted and described as follows:

"Beginning at a point on the east line of the city limits of Kansas City 1,245 feet north of intersection of the east city limits of the city of Kansas City with the center line of U. S. Highway 40 in section 19, township 49 north, range 32 west, and extending in a straight line to a point on the center line of County Highway 4E, 397 feet north of the south line of section 20; thence in a direct line to a point on the east line of section 20, 1,320 feet north of the southeast corner of said section 20, township 49 north, range 32 west; thence east by south in a direct line to the southeast corner of section 21, township 49 north, range 32 west, thence in a southeastwardly direction, parallel to U. S. Highway T. R. 40 to the east line of section 27, township 49 north, range 32 west, thence south along said section line to a point directly west of the Jackson County Home, terminating at the southwest corner of section 14, township 49 north, range 32 west, in Jackson county, Missouri."

The description of the dividing line is further defined by the map filed herein signed by the Raytown Water Company and the Independence Waterworks Company, December 19, 1939, which map is hereby referred to and made a part hereof.

*Ordered:* 2. It is *further ordered;* that the Raytown Water Company and the Independence Waterworks Company shall permit any prospective customer located in the territory across the dividing line herein described to secure water service from the company in the opposite territory of the prospective customer when said prospective customer shall extend a water line from his premises to the system of the water company in the opposite territory and render service until such time as the water company in which the customer is located may be in a position to connect said customer to the other water system at no cost to said customer.

*Ordered:* 3. That this order shall take effect ten days after the date hereof, and that the secretary of the Commission shall forthwith serve on all parties interested herein, a certified copy of this report and order, together with a copy of the map referred to and made a part *ordered:* 1; and that the applicant and all other interested parties shall notify the Commission before the effective date of this report and order, in the manner prescribed by § 25 of the Public Service Commission Law (§ 5145 R. S. Mo. 1929), whether the terms of this order are accepted and will be obeyed.

# Re Montana-Dakota Utilities Company

[Docket Nos. 3068–3070, Report and Order No. 1752.]

*Rates, § 649 — Hearing and notice.*

1. The Commission must give the public and the utility reasonable notice of a hearing to determine the reasonableness of rates, since justice requires that all parties to the proceeding have a reasonable opportunity to prepare and present their respective interests, p. 125.

*Procedure, § 23 — Hearing and notice — Discretionary Commission powers.*

2. What constitutes reasonable notice to the public and the utility before hearing is discretionary with the Commission, provided that notice is at least given in strict conformity to the statutes, p. 125.

*Rates, § 649 — Hearing and notice — Purpose.*

3. A notice of public hearing on utility rates, while not governed by the technical rules of pleading, should apprise the public and the utility as to what is in issue, p. 125.

*Rates, § 649 — Hearing and notice — Sufficiency.*

4. A notice of public hearing on utility rates should not contain views of the Commission as to what evidence the utility or the public should offer relative to the reasonableness or unreasonableness of the rates, that being strictly a function for the parties, p. 126.

*Rates, § 32 — Commission functions — Parties.*

5. The Commission is not a party to a rate proceeding before it, but sits as an administrative body fairly and impartially to weigh the evidence and then determine whether or not rates are reasonable, p. 126.

*Rates, § 1 — Nature of rate making.*

6. Each rate case stands upon its own facts and it must be recognized that each utility presents an individual problem, p. 127.

*Return, § 9 — Fair value basis — Right to earn.*

7. A public utility is entitled to earn a fair and reasonable return on the present value of its property used and useful in the public service, p. 127.

*Rates, § 120 — Reasonableness.*

8. A gas consumer need pay only a reasonable rate, p. 127.

*Depreciation, § 6 — Right to allowance.*

9. A utility is entitled to earn a reasonable sum for the depreciation of its property, p. 127.

*Valuation, § 81 — Depreciation — Use of funds.*

10. Depreciation should always be considered in determining the value of utility property for rate-making purposes, but it should only be considered for the purposes for which it is intended and a depreciation fund is not to be used as a utility decides, p. 127.

*Expenses, § 23 — Capital expenditures.*

11. A utility customer is not required to pay through rates the amount expended by the utility for its plant, p. 127.

*Depreciation, § 45 — Use of funds — Bond interest.*

12. Depreciation should not be permitted to be used to pay interest on a utility's bonded indebtedness, p. 127.

*Return, § 101 — Reasonableness — Natural gas.*

13. A return of 5.29 per cent based upon the present value of natural gas property used and useful in the public service was held to be reasonable, p. 128.

*Return, § 101 — Reasonableness — Book value basis.*

14. A return of 6.23 per cent based on the net book value of natural gas property was held to be reasonable, p. 128.

[January 17, 1940.]

HEARING *on order to show cause why natural gas rates should not be reduced; rate schedule prescribed in accordance with opinion.*

APPEARANCES: Roy H. Glover, Great Falls, John C. Benson and Armin Johnson, Minneapolis, Minnesota, Attorneys, representing Montana-Dakota Utilities Company; E. W. Doyle, Attorney, Conrad, representing natural gas consumers; George Bartholomew, Auditor, for the Commission; C. F. Bowman, Chief Engineer, for the Commission; John W. Bonner, Counsel, for the Commission.

By the COMMISSION: Pursuant to complaints filed with this Commission relative to the gas rates charged by the Montana-Dakota Utilities Company, a corporation, to it consumers in Conrad, Choteau, and Valier, Montana, this Commission issued an order to show cause directed to the said utility requiring the utility to appear before the Commission and show cause why the gas rates charged by it in the aforesaid towns should not be reduced. The order to show cause was returnable on August 18, 1939. On August 18, 1939, a public hearing was had in Conrad, Montana, on the order to show cause and after some evidence was introduced on the said date, the hearing on the order to show cause was continued by the Commission to Sep-

tember 21, 1939. It should be pointed out that the hearing place on the order to show cause for Conrad, Choteau, and Valier, Montana, was at Conrad, Montana, on the dates mentioned; hence, all evidence introduced on the days mentioned had to do with the reasonableness of the gas rates charged by the utility to its consumers in the aforesaid towns.

The Montana-Dakota Utilities Company serves natural gas to consumers in its so-called "Conrad division." The Conrad division consists of the towns of Conrad, Choteau, Valier, Gallup City, and farm lines tributary to Conrad and Choteau. Conrad has a population of approximately 1,499 persons and approximately 400 patrons of the utility. Choteau has a population of approximately 926 persons and approximately 250 patrons of the utility. Valier has a population of approximately 575 and the utility has approximately 150 patrons in this town. Gallup City has about 2 patrons of the utility. The utility has approximately 30 consumers receiving gas service from the gas lines tributary to Conrad and Choteau.

The utility procures its natural gas which it sells to its rural consumers and consumers in Conrad, Choteau, Valier, and Gallup City from a gas field known as the Kevin Sunburst field in northern Montana.

The total length of the main pipe line from the gas field to Choteau is 62.385 miles. From this main line there is 4.081 miles of 3-inch pipe which is used to furnish gas for Gallup City. From the main line also a 4-inch line serves Valier and is approximately 14 miles in length.

The rates charged by the utility to its consumers in the Conrad division are as follows:

*General Purposes*

Available for: Cooking, water heating, and heating purposes. Rate:

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| First | 5 | M | cu. | ft. | per | mo. | —60¢ | per | M | cu. | ft. |
| Next | 5 | " | " | " | " | " | —52¢ | " | " | " | " |
| Next | 90 | " | " | " | " | " | —45¢ | " | " | " | " |
| Next | 100 | " | " | " | " | " | —42¢ | " | " | " | " |
| Next | 100 | " | " | " | " | " | —37¢ | " | " | " | " |
| Over | 300 | " | " | " | " | " | —32¢ | " | " | " | " |

Minimum Bill: $1.50 minimum bill per month.

At the beginning of the hearing the utility made a motion to dismiss the proceeding on various grounds, chief of which was that the utility did not have adequate notice within which to prepare for the hearing. The utility also objected that it could not ascertain from the order to show cause just what it was expected to produce in the way of evidence. It should be pointed out relative to these objections that the evidence shows that Mr. Bartholomew, auditor for the Commission, went to Minneapolis, Minnesota, and procured evidence from the original records of the utility's main place of business in said city for the purpose of this rate hearing. This was in the month of June, 1939. The evidence further shows that Mr. Bartholomew at that time met with the representatives of the Montana-Dakota Utilities at their headquarters in Minneapolis and informed them as to the reason why he wanted to procure data from its records. In other words, the utility was informed in June, 1939, that a rate hearing was to be held at Conrad, Montana, involving the rates

charged by the utility to its consumers in its Conrad division. The evidence in this case further shows that as early as the latter part of April or first part of May, 1939, that Mr. Gamble and Mr. Scott, who are officials of the utility, met with certain representatives of the consumers representing Conrad, Choteau, and Valier with the view of arriving at some reduction in rates and that no reductions were arrived at at that time. This evidence was not refuted. It is apparent from the foregoing that the utility knew as far back as May, 1939, that a rate hearing was to be held by this Commission involving the gas rates charged by the utility in its Conrad division. The motion for dismissal was taken under advisement by the Commission and the hearing proceeded. It should be further pointed out that after the hearing of September 21, 1939, at Conrad, Montana, that the Commission, upon the request of the utility, set a further hearing at Helena, Montana, on the 2nd day of October, 1939, for the purpose of permitting the utility to introduce rebuttal evidence in this case if it so desired. Before the time set for said hearing the utility advised the Commission that it did not care to introduce any further evidence in the case.

At the hearing the utility claimed that the original cost of its property in the Conrad division was $487,525.43. No evidence was introduced by the utility which was in itself pertinent in determining the value of the utility upon which the Commission could fix a reasonable return. The engineer for the Commission fixed the value of the utility for rate-making purposes at $262,959, using the method known as reproduction new less accrued depreciation. The auditor for the Commission after making a detailed study of the original records of the utility for the Conrad division arrived at a net book value of $223,239.90, as of the date of the hearing. The evidence shows that on June 7, 1933, the utility advised this Commission during a controversy relative to rates charged by it in its Conrad division, that its book value for the Conrad division as of December 31, 1932, was $455,079.37. At the same time the utility advised the Commission that its balance in the depreciation reserve account for the Conrad division was $83,815.09. The auditor for the Commission in arriving at the net book value named, took into consideration the utility's letter of June 7, 1933, wherein the Commission was advised that the gross book value of the utility as of December 31, 1932, was $455,079.37. The auditor for the Commission then, in arriving at the net book value of the utility, used the book figure of $455,079.37 as a base and procured his later figures in arriving at his net book value from the annual reports submitted by the utility to the Commission from and including the year 1933 up to and including the year 1938, as well as from the books and original records of the utility. It was admitted by the utility that a part of its depreciation fund has gone to pay interest on bonded indebtedness. How much of this depreciation fund has gone for this purpose we do not know.

It should also be observed that the

utility in no way attempted to refute, by competent evidence, the valuation placed on the utility by the Commission's engineer, nor did the utility in any way attempt to refute the net book value of the utility given by Mr. Bartholomew, auditor for the Commission.

The books of the utility show that in 1937 its gross revenue for the Conrad division was $93,273.55 and for 1938 the gross revenue for the said division was $89,093.71. The records of the Commission now show that for 1939 the gross revenue was $90,323.98 or $1,230.27 more than the gross revenue derived for the utility in 1938. After taking into consideration all expenses of the utility, including taxes, operating expenses, depreciation, allocation of Minneapolis office expense, etc., we find that the books of the utility show a net operating revenue for the Conrad division of $20,832.86 for 1937 and $12,601.07 for 1938. It is thus apparent that the average net operating revenues for 1937, 1938 of the utility for its Conrad division was $16,716.96.

[1, 2] Before a hearing is held in determining the reasonableness of utility rates the public and the utility should be given reasonable notice of the hearing by the Commission. Justice requires that all parties to the proceeding have a reasonable opportunity to prepare and present their respective interests.

What constitutes reasonable notice to the public and the utility before a hearing in our opinion is discretionary with the Commission, provided, however, that notice is at least given in strict conformity to the statutes.

Section 3897, Revised Codes of Montana, 1935, provides that upon investigation or hearing by this Commission relative to utility rates or service that the utility and the complainants must be given at least ten days' notice of the time when and where such investigation and hearing will be held, at which hearing or investigation both the complainants and the utility shall have the right to appear by counsel or otherwise, and be fully heard.

The records in this case show that this Commission caused a notice of the hearing to be served on the public and the utility stating that the hearing would be held at Conrad, Montana, on August 18, 1939, and that on the request of the utility and with its consent the other dates for further hearings in this case were set. On July 27, 1939, the utility received the show cause order setting this case for hearing. It is obvious, therefore, that the utility had at least twenty-two days actual notice of the hearing. Furthermore, the evidence in the case conclusively shows that the utility knew in May, 1939, that a hearing on the rates involved in this case would be held by this Commission.

[3] A notice of public hearing on utility rates should apprise the public and the utility as to what is in issue. However, such a notice in our opinion is not governed by the technical rules of pleading. In this case the notice of hearing recited in substance that because of complaints made to this Commission directed against the reason-

ableness of the natural gas rates charged by the utility for the furnishing of natural gas for commercial and domestic purposes to consumers in and about Conrad, Choteau, and Valier, and all consumers in the Conrad division, that a public hearing would be held before the Commission at Conrad, Montana, on August 18, 1939, at 9 o'clock A.M. on said date, at which hearing a complete investigation of the reasonableness of the rates, tolls, charges, and schedules then in effect and then being charged by the utility for natural gas for commercial, domestic, and other purposes to all persons and corporations served by the utility in and about Conrad, Valier, and Choteau, Montana, would be made if the circumstances warranted. The notice further recited that the hearing would be continued from day to day until a thorough investigation would be made of all such rates, tolls, charges, and schedules, and the utility was directed on the date mentioned then and there to show cause why an order should not be made substantially reducing such rates, tolls, charges, and schedules in said towns. The order further recited that at such hearing an investigation would be made by the Commission relative to the character and adequacy of the services furnished by the utility to the consumers in said towns as well as to the quality of the natural gas furnished to said consumers by the utility.

Section 3897, Revised Codes of Montana, 1935, does not specify any type of particular notice to be given the public or the utility of a hearing involving rates or services. The statute does, however, give the Commission a right to hold a public hearing upon complaints where "any of the rates, tolls, charges, or schedules, or any joint rate or rates, are in any way unreasonable or unjustly discriminatory, . . . or that any service is inadequate."

[4, 5] We believe that the aforesaid notice amply apprised the parties of what was to be investigated at the hearing involved. The utility concerned here has been engaged in various rate hearings and it is significant that it is the utility who is complaining about the notice rather than members of the public who are not generally engaged in rate hearings as is this particular utility. Certainly this utility and its counsel should know what evidence to present at a rate hearing under such a notice as given in this case. We do not believe that a notice of a public hearing concerning rates should contain views of the Commission as to what evidence the utility or the public should offer relative to the reasonableness or unreasonableness of rates. That function is strictly one for the parties. It must always be remembered that the Commission is not, strictly speaking, a party to the proceeding but sits as an administrative body to fairly and impartially weigh the evidence and then determine whether or not the rates are reasonable or unreasonable.

Because of the aforesaid reasons we do not believe that the motion made by the utility to dismiss is well taken and we, therefore, overrule the same. In a case where we recently ruled the same as here on this point, see Re Montana-

Dakota Utilities Co. (1939) 31 PUR (NS) 229.

[6] Each utility case stands upon its own facts and it must be recognized that each utility presents an individual problem. Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR (NS) 65, 59 S Ct 715.

[7] We have heretofore held that a utility is entitled to earn a fair and reasonable return on the present value of its property used and useful in the public service. Re Montana-Dakota Utilities Co. *supra;* Re Scott Water Plant (1939) 31 MUR —, 31 PUR (NS) 124; Re Citizens Gas Co. (1938) 31 MUR —, 26 PUR (NS) 465; Re Billings (1938) 31 MUR —, 23 PUR (NS) 442, Re Horning (1938) 31 MUR —, 24 PUR (NS) 462; Miles City v. Montana-Dakota Utilities Co. (1938) 31 MUR —, 26 PUR (NS) 358; Consumers v. Saltese Electric Light & Water Co. (1938) 31 MUR —, 26 PUR (NS) 333; Customers v. Kevin Gas Distributing Co. (1938) 31 MUR —, 26 PUR (NS) 327; Re Big Horn Oil & Gas Develop. Co. (1938) 31 MUR —, 27 PUR (NS) 41; Re Great Northern Utilities Co. (1938) 31 MUR —, 26 PUR (NS) 393. See also Great Northern Utilities Co. v. Public Service Commission, 88 Mont 180, PUR 1930E 134, 293 Pac 294.

[8] And we have heretofore held that a gas consumer need only pay a reasonable rate. Re Montana-Dakota Utilities Co. *supra;* Re Big Horn Oil & Gas Develop. Co. *supra;* Re Billings, *supra.*

[9–12] In our opinion this utility is not using its depreciation fund for the purpose intended by good accounting practices and as governed by legal principles. To begin with, in order that the property of the utility be properly maintained and that the value upon which the return is based may not be lessened, a utility is, therefore, entitled to earn a reasonable sum for the depreciation of its property. Furthermore, depreciation should always be considered in determining the value of the utility's property for rate-making purposes. However, in so considering depreciation it should be only considered for the purposes for which it is intended and is not to be used as a utility so decides. A patron of a utility is not required to pay through rates the amount expended by the utility for its plant. Oklahoma Nat. Gas Co. v. Corporation Commission (1923) 90 Okla 84, PUR 1924A 132, 216 Pac 917.

In our opinion depreciation should not be permitted to be used for the purpose of paying interest on its bonded indebtedness, but should be used for the purpose intended. Louisiana R. Commission v. Cumberland Teleph. & Teleg. Co. (1909) 212 US 414, 424, 53 L ed 577, 29 S Ct 357.

In reviewing the evidence in this case, and after considering all the facts and circumstances involved, and after taking into consideration everything pertaining to the value of this utility as far as its Conrad division is concerned, we are of the opinion that the following rates will yield to the utility a fair and reasonable rate on the pres-

ent value of its property used and useful in the public service in its Conrad division.

*General Purposes*

Available for: Cooking, water heating, and heating purposes. Rate:

First 20 M cu. ft. per mo.—50¢ per M cu. ft.
Next 80 " " " " " —45¢ " " " "
Next 100 " " " " " —42¢ " " " "
Next 100 " " " " " —37¢ " " " "
Over 300 " " " " " —32¢ " " " "
Minimum Bill: $1.50 minimum bill per month.

[13] The above rates will result in a reduction of $2,804.76 in the operating revenue of the utility. Now then, taking the rate base of the utility to be $262,959 which we believe is the present value of the property of the utility, used and useful in the public service, in the Conrad division as testified to by the Commission's engineer Bowman and which value is based also in our estimation upon all of the evidence introduced in the case, the aforesaid rates would yield a return of 5.29 per cent, which rate of return we deem reasonable.

[14] It is obvious that if we take the net book value of the utility, which figures are taken from the records of the utility and from the annual reports of the utility filed with this Commission, that the net book value does not exceed $223,239.20 as testified to by Mr. Bartholomew, auditor for the Commission. This being so, it is apparent that the rates herein named will yield to the utility a return of 6.23 per cent based on the net book value of the utility which rate of return we deem to be reasonable.

The aforesaid rates shall become effective February 1, 1940.

An appropriate order will be entered.

# Industrial Progress

*Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.*

## Commonwealth Edison Plans Extensive Building Program

THE Commonwealth Edison Co. has under consideration an extensive program of construction which should place its system in a position to meet, not only normal growth, but also extraordinary increases in power requirements, according to a recent announcement.

Two major projects now under construction are the addition of 105,000 kilowatts generating capacity at its Powerton Station near Pekin, Ill., and a 50,000-kilowatt high pressure topping unit and additional boiler capacity at its Northwest Station in Chicago. Installation of a 25,000-kilowatt high pressure topping unit and additional boiler capacity at the Joliet, Ill., station of Public Service Co. of Northern Illinois, a subsidiary, has been authorized.

## Elliott Company Appoints Peterson to Direct Sales

V. H. PETERSON, who for the past two years has been assistant to the president in coördinating sales activities, has been named general sales manager of the Elliott Company, Jeannette, Pa. Mr. Peterson has been with the Elliott Company since 1925. He served as sales engineer in the Pittsburgh office and district manager of the Rochester and Washington, D. C., offices before returning to Jeannette in 1938.

## Gas Exhibits, Inc. Announce New Officers and Directors

ELECTION of the 1940 officers and members of the board of directors of Gas Exhibits, Inc., which sponsors the "Court of Flame" exhibit at the New York World's Fair has been announced from the organization's national headquarters at 4 Irving Place, New York City. This year's board is somewhat larger than that of 1939, with seven newly-elected members and eighteen members re-elected.

Hugh H. Cuthrell, vice-president of the Brooklyn (N.Y.) Union Gas Company, was re-elected president. H. N. Ramsey, president of the Welsbach Company, Gloucester City, N. J., who was on the board in 1939, was elected vice-president; N. T. Sellman, assistant vice-president of the Consolidated Edison Company of New York, was re-elected treasurer, and Charles Nodder, of New York, was elected secretary and comptroller.

The officials and board members of Gas Exhibits, Inc. comprise executives of leading American gas utilities and manufacturers of gas appliances and accessory equipment.

## Byron Weston Issues Magazine Devoted to Paper

"WESTON Papers" a magazine devoted to the interests of buyers, users and converters of fine paper is being issued by Byron Weston Company, Dalton, Mass. This booklet contains brief, informative articles on the efficient selection and purchase of ledger, index, bond and machine accounting papers; up-to-the-minute reviews of important technical developments; inside information on the standards, requirements and buying practices of important users of paper; practical suggestions for improving forms and record keeping systems; useful information about printing, lithographing, engraving, ruling, binding and other converting processes; and similar information bearing on the selection, purchase or efficient and economical use of fine papers.

"Weston Papers" is published regularly by Byron Weston Company. Free subscription will be entered upon request direct to the Company.

## District Sales Meetings Held by Meter and Valve Companies

THE final meeting in a series of district gatherings for the salesmen of the Pittsburgh Equitable Meter Company and Merco Nordstrom Valve Company was held at the factory in Pittsburgh during the week of February 19th with representatives from the Pittsburgh and Buffalo sales offices in attendance.

Starting early in January with a meeting in Tulsa, the company has, at weekly intervals, held sales meetings in each district office. Each meeting was conducted by Captain A. E. Higgins, vice president and sales manager, who outlined to district men the sales objectives and merchandising plans for 1940. Chief Engineer A. D. MacLean presented the engineering aspects of recently introduced or improved products and open discussions were held under the direction of factory men in order that every salesman would be fully informed.

The representatives from the factory in

Pittsburgh conserved time by flying from meeting to meeting in the company plane piloted by Captain Higgins.

## Hendon Named Vice President and Director of Silex Co.

CLAUDE Hendon, who has been with the General Electric Company for twelve years—the last five years as manager of the small Appliance and Electric Fan Departments—has been elected vice president in charge of merchandising, and a member of the board of directors of The Silex Company.

CLAUDE HENDON, *Vice President-Director The Silex Company, Hartford*

## Dodge Two-Speed Axles Described in Pamphlet

ADVANTAGES of the 2-speed axles used in Dodge Job-Rated Dual-Purpose truck models are fully described in a new pamphlet now being distributed by Dodge division, Chrysler Corporation.

There are many trucking operations, it is claimed in the pamphlet, in which a Dodge Job-Rated Dual-Purpose truck affords the owner important advantages. Chief among these are operating economy, flexibility, higher speed or reduced engine wear, resulting in lower maintenance cost. Quoted as samples of uses for this type truck are excavation work where power is needed for pulling out heavy loads and speed for returning light; in hilly cities; inter-city hauls through country partly hilly and partly flat, or any operation where a diminishing load or a light return trip at higher speed is desirable. The construction of the Dodge 2-speed axle, the way it operates and what it will do for the operator are all clearly described in the pamphlet.



## G-E Reports Jump in Power-Plant Units

TURBINE generators ordered from the General Electric Company by private and municipal power plants in the last fourteen months, in ratings of 10,000 kilowatts and higher, have exceeded 1,000,000 kilowatts, C. S. Coggeshall, manager of the company's turbine division, has announced.

The fourteen months' business equals the total of domestic utility and municipal orders placed with the company in 1937 and 1938, and is within 200,000 kilowatts of the generating equipment ordered in 1929, according to the announcement.

## Toledo Edison Co. to Spend $4,250,000 on Expansion

A $4,250,000 expansion program was announced recently for Toledo Edison Co. by C. L. Proctor, vice president and general manager.

Installation of a 50,000 kilowatt turbo-generator, is included in the expansion program, according to the announcement.

## Telephone Companies Report Gain in Stations

THE New York Telephone Company added 9,204 stations to its lines last month, compared with a gain of 6,942 in February, 1939, according to a recent announcement. The cumulative gain for the first two months of this year was 19,152, compared with 13,322 in the same period last year.

A gain in February of 6,641 telephones in service was reported by the Bell Telephone Company of Pennsylvania. This compared with an increase of 4,672 telephones in February, 1939.

## Johns Manville Announces New Machine-Vibration Isolator

A NEW, easily installed vibration isolator, designed to economically control machine vibration and reduce the resulting noise, was recently announced by Johns-Manville. The device, known as the J-M Controlled Spring Isolator, was developed for use on the bases of motors, generators, pumps, ventilating fans, and similar equipment where vibration and excessive motion create noise and tend


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**ACCOUNTANTS and AUDITORS**

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# Ditto D-44

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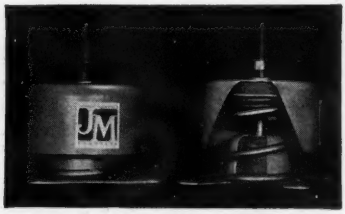
to wear out machine parts and damage connections as well as crack the supporting walls and floors.

The working parts of the unit consist of a coil spring and a rubber load pad, which support the equipment and isolate vibration, and an adjustable rubber snubber inside the base, which controls excessive motion. Through the combination of these parts, the manufacturer




*The new Johns-Manville Controlled Spring Vibration Isolator. View on the right shows housings cut away to reveal the unit's construction.*

states, the isolator provides both the high compliance necessary for good isolation and the control needed to limit motion in the equipment.

The isolator was built to take care of horizontal and torsional as well as vertical vibration, and tests by the J-M Research Laboratories, where the unit was developed, indicate it to be particularly efficient for the low frequency vibrations resulting from slow speeds and from many operations involving reciprocal action. The load pad is designed to overcome any high frequency vibrations.

The isolator is made in two sizes: Light Duty, for loads from 60 to 190 lb. per isolator; and Heavy Duty, for loads from 250 to 720 lb. per isolator. Heavy machines may be isolated by clusters of the units. The loaded overall dimensions of the isolator are 6" x 6" by approximately 3¼" high. It is enclosed in a metal jacket which protects the rubber parts from oil and light.



## G-E Supply Corp. Traveling Show Makes Debut in Hartford

WITH 10 major Eastern and Mid-Western cities on its itinerary, a traveling show sponsored by General Electric Supply Corporation opened recently in the State Trade School, Hartford, Conn. Conceived as a simple means of giving electrical contractors and industrialists an "action picture" of the latest types of electric equipment available, the show consists of a brief stage presentation, operating exhibits of 20 important lines of electric equipment from switchgear to fluorescent lamps, and a House of Magic demonstration. Other cities slated for visits include Buffalo, Cleveland, Detroit, Chicago, Cincinnati, Pittsburgh, Baltimore, Philadelphia, and Newark.

Among specific product lines included in the 20 tons of electric equipment on display are motors, and control, Pyranol transformers, switchgear, time switches and instruments, small heating devices, voltage regulators, wire and cable, wiring material and various types of lamps and lighting fixtures.

## 200 See Testing of Compressed Air Circuit Breaker

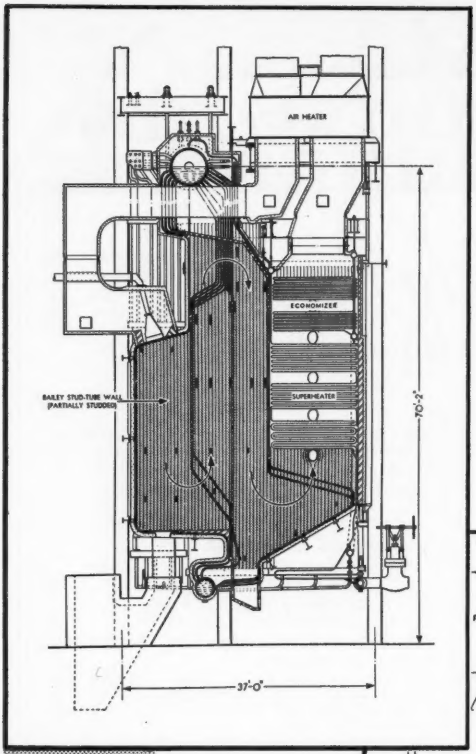
MORE than 200 utility and industrial engineers and executives witnessed the testing of a compressed air circuit breaker at the maximum short-circuit capacity of the largest high-power laboratory in the country during an air breaker demonstration held by the Westinghouse Electric and Manufacturing Company, March 5th, at its East Pittsburgh works.

The compressed air breaker, a newly developed device, was tested on power interruptions ranging from the opening of normal load current of 2000 amperes at 13,200 volts to the three-phase, 1,500,000-kva. short-circuit capacity of the high-power laboratory. Oscillograms made during the demonstration showed that all currents were interrupted at the first current zero, with about one-half cycle of arcing, and throughout the entire range of tests no transient voltage greater than twice normal was observed.

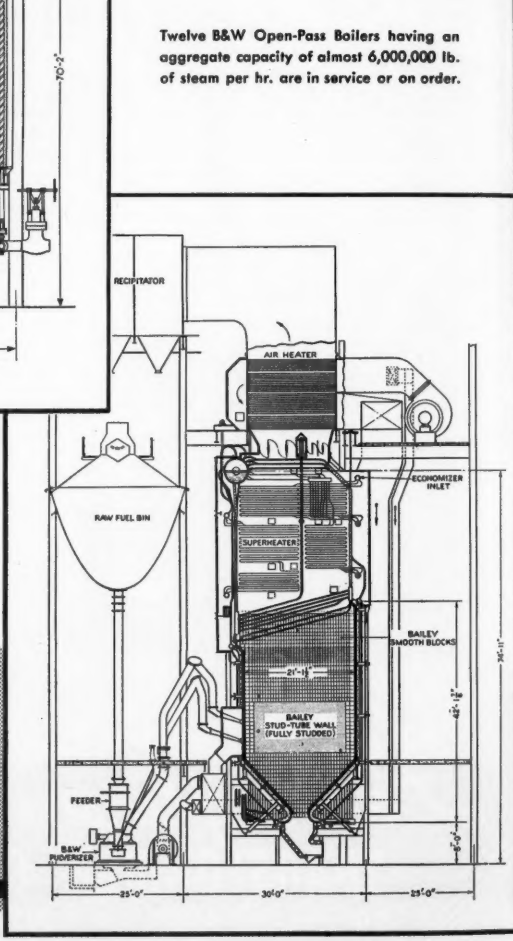
## Adding Machine Described in Remington Rand Bulletin

A BULLETIN published by Remington Rand Inc., describes a small, light weight, low cost electric adding machine recently perfected by this company. The bulletin gives complete information and shows how time and money can be saved by the application of machines to office work. Several operations of the machine are illustrated.

Copies may be secured direct from Remington Rand Inc., Buffalo, New York.




**Twelve B&W Open-Pass Boilers having an aggregate capacity of almost 6,000,000 lb. of steam per hr. are in service or on order.**




**Twenty B&W High-Head Boilers in service or on order have a combined capacity of almost 8,000,000 lb. of steam per hr.**

# Analysis of 53 Boilers of Modern Design

The central station industry is in a unique position to appraise new designs of equipment. The ability, experience, and progressiveness of its engineers are of the highest order. Furthermore, the free exchange of information on performance of equipment makes experiences with new types of equipment quickly known to the entire industry.

When new types of equipment, such as boilers, indicate in operation unmistakable evidence of fundamental soundness, and the manufacturer has the reputation of standing solidly back of his product, they are promptly adopted by the industry.

This has been the case with new types of boilers developed by B&W. Since 1932, fifty-three Babcock & Wilcox boilers of the three new types illustrated have been ordered. Their combined capacity is over 21,000,000 pounds of steam per hour. Other pertinent data on these boilers are:

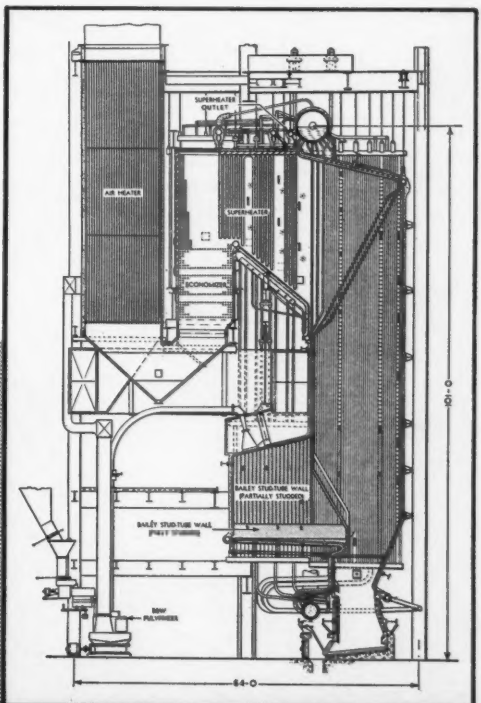
| | |
|---|---|
| No. of companies ordering | 20 |
| No. of stations involved | 26 |
| Capacity of largest single unit, lb. steam per hr. | 900,000 |
| Capacity smallest single unit, lb. steam per hr. | 200,000 |
| Max. steam pressure, lb. per sq. in | 2500 |
| Max. steam temperature, F | 950 |

THE BABCOCK & WILCOX COMPANY
85 LIBERTY ST., NEW YORK, N. Y.

One company purchased four additional boilers of one type for two additional stations after its original installation had been in service for 10 months. And the industry, as represented by 14 companies, purchased 30 boilers after the original installations of their types had been in service six months or more.

These companies enjoy the benefits of boilers designed to meet today's new and exacting operating requirements—through the use of design principles that are advanced yet of demonstrated soundness.

G-170-T




Twenty-one B&W Radiant Boilers having a total capacity of over 8,000,000 lb. of steam per hr. are in service or on order.

**BABCOCK & WILCOX**


# "That hits me where I live!"

**THEY TELL ME** the boss had to get *eight thousand dollars* to set me up in the plant with the equipment to do my job.

No eight thousand—no job!

A lot of people with savings had to be sold the idea that I could produce a profit on that much money, before they'd come across with it.

The fellow that did the selling was an investment banker, and I'm for him all the way. More power to him!

I wish the politicians would quit shoving the investment bankers around and tying them up with a lot of screwy rules and regulations.

We need more money invested in jobs, not less. And I don't mean the kind the politicians spend tax money for.

I mean jobs making things that people want, and buy. That's where the rosy future is.

If anyone knows a banker or any other business man who's doing the wrong thing—why not name him and bring him to trial?

But let's not stop the whole parade because somebody's out of step. Seems to me it's time to give business the green light.

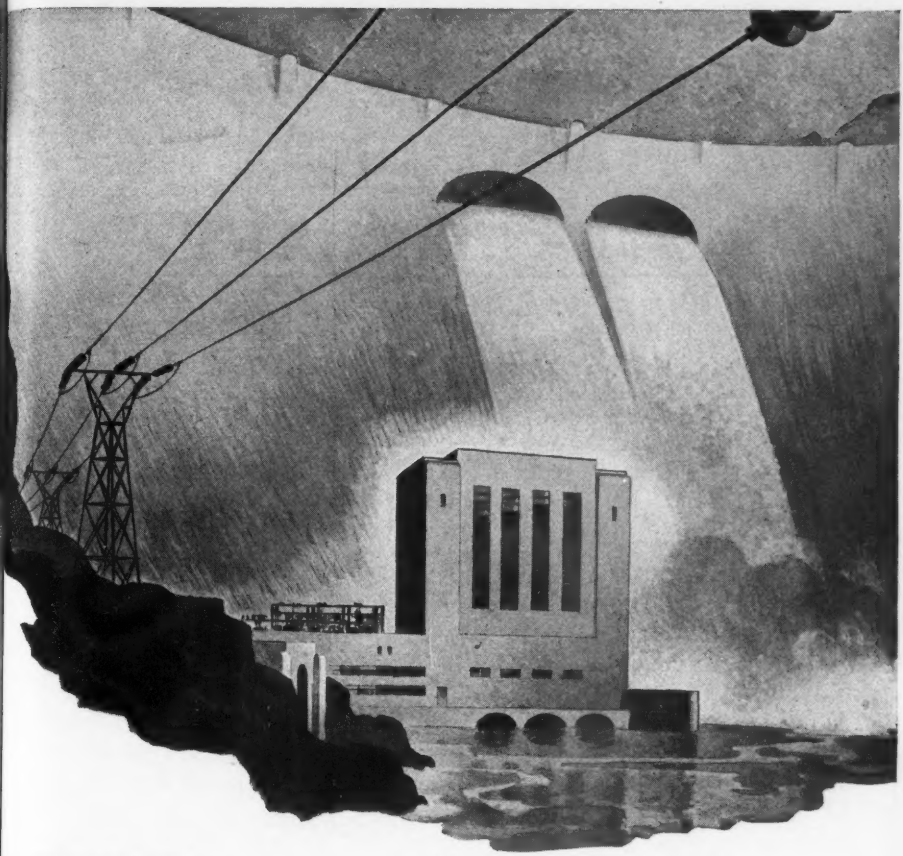
I'm wise now. I work for a living with eight thousand iron men behind me, so I'm in business myself.

*And what helps business helps me!*

*This message is published by*

## NATION'S BUSINESS

It is the 39th of a series contributed toward a better understanding of the American system of free business enterprise. Regardless of your political affiliations, if you have a point of view you would like to express on developments now shaping in the field of public policy relative to investment banking, why not write to your Congressman or Senator?



# POWER . . .

## as nearly unfailing as human skill can devise

THE almost flawless dependability that characterizes the electric power and light services of the nation today is the result of years of painstaking scientific development . . . conducted alike by the utility companies and by the industries which supply them with equipment. Because of the part which Exides have played in this development — because throughout the entire history of the electric industry the quality and dependability of these batteries have never varied — Exides occupy an enviable position. This explains why, in so many of the nation's largest power plants, Exides faithfully provide power for the operation of vital equipment, and, in emergencies, furnish light for the plant itself.

THE ELECTRIC STORAGE BATTERY CO.
*The World's Largest Manufacturers of Storage Batteries for Every Purpose*
PHILADELPHIA
Exide Batteries of Canada, Limited, Toronto

**Exide**
**BATTERIES**

# PROFESSIONAL DIRECTORY

• . These pages are reserved for engineers, accountants, rate experts and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction. « « « « «

## PROFESSIONAL DIRECTORY (*continued*)



(*Concluded on following page*)

## PROFESSIONAL DIRECTORY *(concluded)*

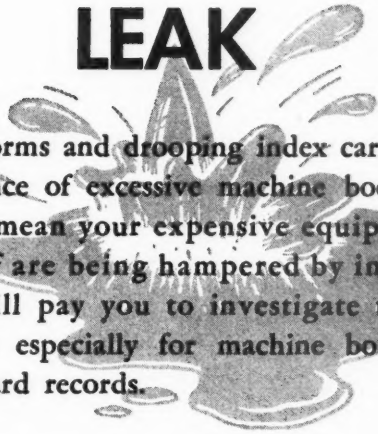
# INDEX TO ADVERTISERS

*[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]*



*Fortnightly advertisers not in this issue.

# STOP THIS LEAK



**Dog-eared forms and drooping index cards are the surest evidence of excessive machine bookkeeping costs. They mean your expensive equipment and trained staff are being hampered by inadequate paper. It will pay you to investigate these two papers made especially for machine bookkeeping forms and card records.**

## WESTON'S MACHINE POSTING LEDGER

**or Forms.** One-way grain direction akes forms stand straight — special fin- h is smudge-proof, clean-erasing — forms e easier to sort and file. Made in Buff, bs. 24, 28, 32 and 36 and in White, Blue nd Pink, sub. 32. 50% rag content.

## WESTON'S MACHINE POSTING INDEX

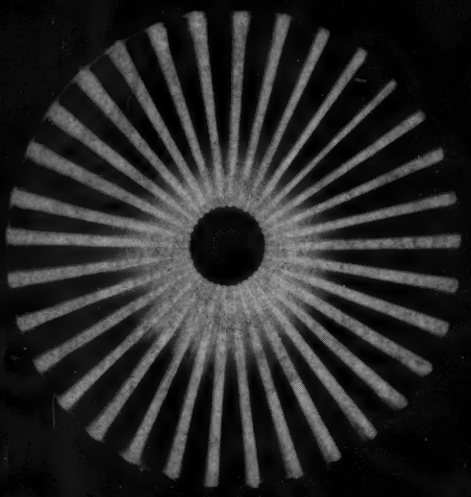
**For Cards.** Its ledger finish provides excellent writing, erasing and typing qualities. Tabs retain their snap. Made in Buff, White, Blue, Ecru, and Salmon in 180 M, 220 M, 280 M and 340 M and in Pink 180 M (basis 25½ x 30½).

*Specify Weston's Machine Posting Ledger and Index when ordering machine bookkeeping forms and index cards.*

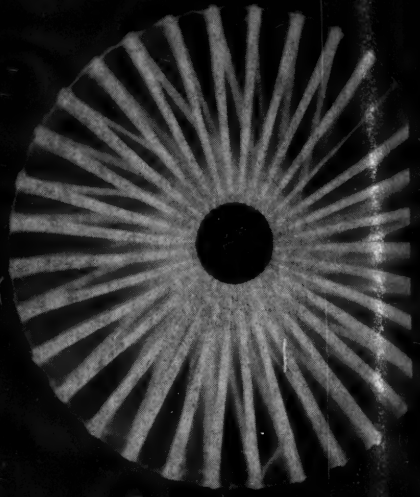
**FOR PAPER BUYERS**

Read *Weston's Papers*, a magazine of news and information for paper buyers. Sent free.

Write **BYRON WESTON COMPANY, DALTON, MASS.** Dept. C



Horizontal cross-section of a smooth reflector. Light rays are reflected back through the lamp stem, creating excessive temperatures.



Cross-section of the new G-E "stepped" reflector. Light rays are reflected back to one side of the lamp stem—preventing overheating and premature lamp failure.

# 48 "STEPS" TO BETTER LIGHTIN

When electric-service companies first installed Form 79 street-lighting luminaires five years ago, they confirmed our statement of "50 per cent more light on the road." And they reported that the spun-sealed design reduced globe breakage by 85 per cent.

The photographs illustrate a recent, revolutionary improvement. In ordinary, smooth, deep-bowl reflectors, radiant energy from the lamp filament is reflected back through the lamp stem—causing excessive temperatures and resulting in shortened lamp life. G-E engineers recently overcame this serious high-temperature problem by designing a reflector wit vertical steps—steps that redirect rays to one side of the focal axis. T show that lamp stem temperatures now 278 F cooler, and of course prema lamp failures are minimized.

It is obvious that with this new step reflector, maintenance, and therefore t lighting costs, are again substanti reduced. This widens your market profitable street-lighting installations.

Your appreciation, as shown by y purchases, encourages this developme work which, in turn, enables you to incre your lighting revenue—and bring last benefits to the communities you se

GENERAL ELECTRIC

300-4